

SAN FRANCISCO PUBLIC LIBRARY



3 1223 11169 5384



5 / S

San Francisco Public Library

Government Information Center
San Francisco Public Library
100 Larkin Street 5th Floor
San Francisco, CA 94102

REFERENCE BOOK

Not to be taken from the Library

Ethics Commission

01-23-14P05:19 RCVD



25 Van Ness Ave., Suite 220
San Francisco, CA 94102
Phone 252-3100 Fax 252-3112

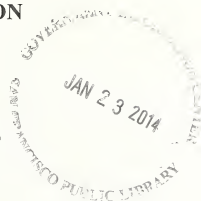
**SAN FRANCISCO ETHICS COMMISSION
NOTICE OF REGULAR MEETING**

January 27, 2014, 5:30 P.M.

and AGENDA

Room 400 City Hall

1 Dr. Carlton B. Goodlett Place, San Francisco



- I. Call to order and roll call.
- II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.
- III. Discussion and possible action regarding Ethics Complaint No. 11-130606 (Respondent: Juliet Ellis, San Francisco Public Utilities Commission). (Attachments: Proposed Stipulation and Joint Exhibit with the Fair Political Practices Commission.)
- IV. Discussion and possible action on Ethics Commission budget. By February 21, 2014, all departments must submit their budget requests to the Controller's Office. The Mayor's Budget Office has projected a \$100.75 million General Fund shortfall for FY 2014-15 and a \$118.3 million shortfall for FY 2015-16, based on current operations and staffing levels and estimated revenues. Departments have been instructed to submit a budget including ongoing savings equal to 1.4 percent of base General Fund support for FY 2014-15 and an additional 1.85 percent contingency target of base General Fund support for FY 2015-16. At this meeting, the Commission will review staff's recommendations and possibly provide guidance in preparing the budget submission for FY 2014-15 and FY 2015-16. (Attachment: January 22, 2014 staff memorandum.)
- V. Discussion and possible action on the minutes of the Commission's meeting of November 25, 2013. (Attachment: November 25, 2013 draft minutes.)
- VI. Discussion of Executive Director's Report. An update of important Ethics Commission staff activities since the previous monthly meeting. The written report, which is available at the Commission office and on its website, covers the investigation and enforcement program, revenues, campaign finance disclosure program, revenues, public financing/campaign finance audit program, lobbyist program, campaign consultant program, and outreach and education. Any of these subjects may potentially be part of the Director's presentation or discussed by the Commission. (Attachment: Executive Director's Report.)

- VII. Items for future meetings. Commissioners may propose items for future agendas and the Commission may determine the priority of these items. (Discussion.)
- VIII. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.
- IX. Adjournment.

There will be an opportunity for public comment on each agenda item.

Materials contained in the Commission packets for meetings are available for inspection and copying during regular office hours at the Ethics Commission, 25 Van Ness Avenue, Suite 220, at least 72 hours prior to meetings. Any materials distributed to members of the Ethics Commission within 72 hours of the meeting or after the agenda packet has been delivered to the members are available for public inspection at the Ethics Commission, 25 Van Ness Avenue, Suite 220, San Francisco, during normal office hours.

Cell phones, pagers and similar sound-producing electronic devices: The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. The Chair may order the removal from the meeting room of any person responsible for the ringing or use of a cell phone, pager, or other similar sound-producing electronic devices.

Disability Access: The Ethics Commission meeting will be held in Room 400, City Hall, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA. The Commission meeting room is wheelchair accessible. The closest accessible BART station is the Civic Center Station at United Nations Plaza and Market Street. Accessible MUNI lines serving this location are: #42 Downtown Loop, and #71 Haight/Noriega and the F Line to Market and Van Ness and the Metro Stations at Van Ness and Market and at Civic Center. For information about MUNI accessible services call (415) 923-6142. There is accessible curbside parking adjacent to City Hall on Grove Street and Van Ness Avenue and in the vicinity of the Veterans Building at 401 Van Ness Avenue adjacent to Davies Hall and the War Memorial Complex.

To obtain a disability-related modification or accommodation, including auxiliary aids or services, to participate in a meeting, please contact the Ethics Commission at least 48 hours before the meeting, except for Monday meetings, for which the deadline is 4:00 p.m. the previous Friday. Late requests will be honored, if possible. Services available on request include the following: American sign language interpreters or the use of a reader during a meeting, a sound enhancement system, and/or alternative formats of the agenda and minutes. Please contact the Ethics Commission (415) 252-3100 to make arrangements for a disability-related modification or accommodation.

Chemical-Based Products: In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical-based products. Please help the City accommodate these individuals.

KNOW YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE (Chapter 67 of the San Francisco Administrative Code): Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils, and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

FOR MORE INFORMATION ON YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE OR TO REPORT A VIOLATION OF THE SUNSHINE ORDINANCE, CONTACT THE SUNSHINE ORDINANCE TASK FORCE, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102-4689; phone: (415) 554-7724; fax: (415) 554-7854; email: SOTF@SFGOV.ORG. Copies of the Sunshine Ordinance can be obtained from the Clerk of the Sunshine Task Force, at the San Francisco Public Library, and on the City's website at <http://www.sfgov.org>

Lobbyist Registration and Reporting Requirements: Individuals who influence or attempt to influence local policy or administrative action may be required by the San Francisco Lobbyist Ordinance (San Francisco Campaign and Governmental Conduct Code sections 2.100 – 2.160) to register and report lobbying activity.

For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 25 Van Ness Avenue, Suite 220, San Francisco, CA 94102; telephone (415) 252-3100, fax (415) 252-3112; and website: www.sfgov.org/ethics.

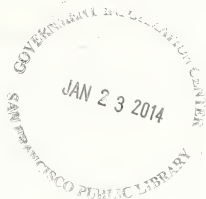
S:\AGENDA\2014\1.27.2014.doc



Digitized by the Internet Archive
in 2015

<https://archive.org/details/agenda2014sanf>

JOHN ST. CROIX
 Executive Director
 SAN FRANCISCO ETHICS COMMISSION
 25 Van Ness Avenue, Suite 220
 San Francisco, CA 94102
 415-252-3100



Complainant

BEFORE THE SAN FRANCISCO
 ETHICS COMMISSION

In the Matter of)

Ethics Complaint No. 11-130606

Juliet Ellis,)

Respondent.)

STIPULATION, DECISION
 AND ORDER

THE PARTIES STIPULATE AS FOLLOWS:

1. This Stipulation, Decision, and Order ("Stipulation") is made and entered into by and between Juliet Ellis ("Respondent"), and the San Francisco Ethics Commission ("the Commission").

2. This Stipulation will be submitted to the Commission for consideration at its next regularly scheduled meeting.

3. Respondent and the Commission find it in their best mutual interest and advantage to settle and resolve all factual and legal issues in this matter and to reach a final disposition without the necessity of holding an administrative hearing to determine Respondent's liability.

4. If approved by the Commission, this Stipulation and the accompanying decision and order will resolve all factual and legal issues raised in and will be the final disposition of this matter.

1 5. Exhibit 1, attached and incorporated by reference, is a true and accurate summary of
2 the facts in this matter. Respondent has committed two violations of the San Francisco Campaign
3 & Governmental Conduct Code ("SF C&GCC") section 3.206, subdivision (a), one violation of SF
4 C&GCC section 3.206, subdivision (b), and one violation of SF C&GCC section 3.218(a), as
5 described in Exhibit 1.

6 6. Respondent agrees to pay a penalty of \$5,000. Respondent agrees to deliver \$1,000
7 of this penalty to the Commission within ten (10) business days of the Commission's approval of
8 this Stipulation.

9 7. Respondent agrees to pay the remaining \$4,000 penalty in \$500 monthly
10 installments to the Commission, which the Commission must receive according to the delivery
11 dates set forth in this paragraph. Respondent agrees to pay the first \$500 installment by no later
12 than March 15, 2014. Respondent agrees to deliver each subsequent \$500 installment to the Ethics
13 Commission office by the 15th day of each month until Respondent has paid the full balance.
14 Respondent agrees that if the 15th day of the month falls on a day when the Ethics Commission is
15 closed, then Respondent will pay the monthly payment on the next day following the 15th that the
16 Commission is open for business. Respondent agrees to pay the full balance of the penalty by
17 October 15, 2014.

18 8. Respondent agrees to make all payments to the Commission in the form of a check
19 or money order payable to the "City and County of San Francisco." All payments shall be
20 delivered to the following address:
21

22 San Francisco Ethics Commission
23 Attn: Enforcement Division
24 25 Van Ness Avenue, Suite 220
25 San Francisco, CA 94102

1 9. Respondent understands, and hereby knowingly and voluntarily waives, any and all
2 procedural rights under Section C3.699-13 of the San Francisco Charter and the Commission's
3 Regulations for Investigations and Enforcement Proceedings with respect to this matter. This
4 includes, but is not limited to, the right to appear personally at any administrative hearing held in
5 this matter, to be represented by an attorney at Respondent's expense, to confront and cross-
6 examine all witnesses testifying at the hearing and to subpoena witnesses to testify at the hearing.

7 10. Respondent understands and knowingly and voluntarily waives all rights to seek
8 judicial review of any action by the Commission on this matter.

9 11. Respondent understands and acknowledges that this Stipulation is not binding on
10 any other law enforcement agency, and does not preclude the Commission or its staff from
11 cooperating with or assisting any other government agency with regard to the complaint, or any
12 other matter related to it.

13 12. This Stipulation is subject to approval by the Commission. In the event the
14 Commission declines to approve this Stipulation, it shall become null and void.


15 13. If the Commission rejects this Stipulation and a full evidentiary hearing becomes
16 necessary, the Stipulation and all references to it are inadmissible, and the Commissioners,
17 Executive Director, and staff will not be disqualified because of prior consideration of this
18 Stipulation.

19 14. This Stipulation, along with the attached Exhibit 1, reflects the entire agreement
20 between the parties hereto and supersedes any and all prior negotiations, understandings, and
21 agreements with respect to the transactions contemplated herein. This Stipulation may not be
22 amended orally. Any amendment or modification to this Stipulation must be in writing duly
23 executed by all parties.
24
25

1 15. This Stipulation shall be construed under, and interpreted in accordance with, the
2 laws of the State of California. If any provision of this Stipulation is found to be unenforceable, the
3 remaining provisions shall remain valid and enforceable.

4 16. The parties hereto may sign different copies of this Stipulation, which will be
5 deemed to have the same effect as though all parties had signed the same document.

6
7 Dated: 1/15/14

8 
9 JOHN ST. CROWN, Executive Director
San Francisco Ethics Commission, Complainant

10
11
12 Dated: _____

13
14 JULIE ELLIS, Respondent
15
16
17
18
19
20
21
22
23
24
25


1 15. This Stipulation shall be construed under, and interpreted in accordance with, the
2 laws of the State of California. If any provision of this Stipulation is found to be unenforceable, the
3 remaining provisions shall remain valid and enforceable.

4 16. The parties hereto may sign different copies of this Stipulation, which will be
5 deemed to have the same effect as though all parties had signed the same document.

6
7 Dated: _____

8 JOHN ST. CROIX, Executive Director
9 San Francisco Ethics Commission, Complainant

10
11
12 Dated: 1-6/14 _____

13 
14 JULIE PELLIS, Respondent

DECISION AND ORDER

In the matter of "Juliet Ellis, Respondent, Complaint Number 11-130606," the San Francisco Ethics Commission approves the stipulation and orders Respondent Juliet Ellis to pay a penalty of \$5,000 to the City and County of San Francisco. The foregoing Stipulation, including the attached Exhibit, is hereby accepted as the final decision and order of the San Francisco Ethics Commission, effective upon execution below by the Chairperson.

IT IS SO ORDERED.

Dated: _____

BEVERLY HAYON, Chairperson
San Francisco Ethics Commission

EXHIBIT 1

I. INTRODUCTION

Respondent Juliet Ellis was the Assistant General Manager for External Affairs of the San Francisco Public Utilities Commission (the "SFPUC") at all times relevant. In addition, Respondent served as the paid chair of Green For All, an Oakland based non-profit organization, from June 2012 through January 2013. As Assistant General Manager for External Affairs of the San Francisco Public Utilities Commission, Respondent was a public official and therefore prohibited by Government Code Section 87100 of the Political Reform Act¹ (the "Act") and San Francisco Campaign & Governmental Conduct Code ("SF C&GCC") Section 3.206 from making, participating in making, or attempting to use her official position to influence any governmental decision in which she had a financial interest. In addition, Respondent was prohibited by SF C&GCC Section 3.218(a) from engaging in any employment, activity, or enterprise that the SFPUC has identified as incompatible in a statement of incompatible activities.

The San Francisco Ethics Commission ("SFEC") and the Fair Political Practices Commission ("FPPC") initiated an investigation into whether Respondent Elis violated provisions of the Act, and SF C&GCC.

In this matter, Respondent impermissibly attempted to use her official position to influence the making of governmental decisions in which she had a financial interest, by contacting staff of the SFPUC, initiating and attending meetings, and participating in discussions concerning contracts with Green For All.

This stipulation is being entered into jointly by Respondent Ellis, the FPPC and the SFEC, to fully resolve the pending FPPC and SFEC investigations and to provide a comprehensive settlement as to all matters within the scope of the FPPC and SFEC investigations. It shall be effective only if approved by both agencies.

For the purposes of this Stipulation, Respondent's violation of the Act is stated as follows:

COUNT 1: At various times in 2012, as a member of the San Francisco Public Utilities Commission, Respondent Juliet Ellis attempted to use her official position to influence a governmental decision in which she had a financial interest, by communicating with San Francisco Public Utilities Commission staff, concerning a \$200,000 contract and a \$50,000 contract with Green For All, in violation of Section 87100 of the Government Code.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18109 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

For the purposes of this Stipulation, Respondent's violations of the SF C&GCC are stated as follows:

- COUNT 1: Respondent Ellis violated SF C&GCC section 3.206(a) when she sought to influence a governmental decision of the City and County in which she had a financial interest within the meaning of California Government Code section 87100 et seq., by communicating with the San Francisco Public Utilities Commission ("SF PUC") staff concerning a \$200,000 contract with Green For All in 2012.
- COUNT 2: Respondent Ellis violated SF C&GCC section 3.206(a) when she sought to influence a governmental decision of the City and County in which she had a financial interest within the meaning of California Government Code section 87100 et seq., by communicating with SF PUC staff concerning a \$50,000 contract with Green For All in 2012.
- COUNT 3: Respondent Ellis violated SF C&GCC section 3.206(b) when she participated in making a \$200,000 contract in which she had a financial interest within the meaning of California Government Code section 1090, by communicating with SF PUC staff concerning the \$200,000 contract with Green for All while a paid Board member of Green For All in 2012.
- COUNT 4: Respondent Ellis violated SF C&GCC section 3.218(a) when she accepted compensation from June 2012 through January 2013 from Green For All, an entity that sought a contract with SF PUC and later had a contract with SF PUC.

II. FPPC INVESTIGATION

SUMMARY OF APPLICABLE STATE LAW

Conflicts of Interest

The primary purpose for the conflict-of-interest provisions of the Act is to ensure that, "public officials, whether elected or appointed, perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them." (Section 81001, subdivision (b).)

In furtherance of this goal, Section 87100 prohibits a public official from making, participating in making, or in any way attempting to use his or her official position to influence a governmental decision in which the official knows, or has reason to know, that he or she has a financial interest. Under Section 87103, a public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect on an economic interest of the official. For purposes of Sections 87100 and 87103, there are six analytical steps to

consider when determining whether an individual has a conflict-of-interest in a governmental decision.²

First, the individual must be a public official as defined by the Act. Section 82048 defines "public official" to include a member of a local governmental agency.

Second, the official must make, participate in making, or attempt to use his or her official position to influence a governmental decision. Under Regulation 18702.3, subdivision (b), a public official attempts to use his or her official position to influence the decision if, for the purpose of influencing the decision, the official acts or purports to act on behalf of, or as the representative of, his or her agency to any member, officer, employee or consultant of an agency.

Third, the official must have an economic interest that may be financially affected by the governmental decision. Under Section 87103, subdivision (c), a public official has a financial interest in any source of income, except gifts or loans by a commercial lending institution made in the regular course of business on terms available to the public without regard to official status, aggregating five hundred dollars (\$500) or more in value provided or promised to, received by, the public official within 12 months prior to the time when the decision is made.

Fourth, it must be determined if the economic interest of the official is directly or indirectly involved in the decision. Under Regulation 18704.1, subdivision (a)(2), a person, including sources of income, is directly involved in a decision before an official's agency when that person, either directly or by an agent is a named party in, or is the subject of, the proceeding concerning the decision before the official or the official's agency. A person is the subject of a proceeding if a decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the subject person.

Fifth, under Regulation 18705.3, subdivision (a), any financial effect of a governmental decision on a person who is a source of income to a public official, and who is directly involved in a decision before the official's agency, is presumed to be material. This presumption may be rebutted by proof that it is not reasonably foreseeable that the governmental decision will have any financial effect on the source of income.

Sixth, it must have been reasonably foreseeable, at the time the governmental decision was made, that the decision would have a material financial effect on the economic interest of the official. Under Regulation 18706, subdivision (a), a material financial effect on an economic interest is reasonably foreseeable if it is substantially likely, not just a mere possibility, that one or more of the materiality standards applicable to that economic interest will be met as a result of the governmental decision. (*In re Thorner* (1975) 1 FPCC Ops. 198.)

² Neither the Public Generally Exception (Section 87103, Regulation 18707) nor the Legally Required Participation Exception (Section 87101, Regulation 18708) apply to this case.

SUMMARY OF FPPC FINDINGS

Respondent Juliet Ellis was the Assistant General Manager for External Affairs of the San Francisco Public Utilities Commission at all times relevant. In addition, Respondent served as the paid chair of Green For All, an Oakland based non-profit organization, from June 2012 through January 2013, assuming increased responsibilities during the CEO's maternity leave. Respondent disclosed income from Green For All in the \$10,001 to \$100,000 range for 2012.

The decisions which were the subject of the investigation concerned a contract awarded in July of 2012 and negotiations on a second contract that was not entered into. The San Francisco Public Utilities Commission awarded a contract to Green For All for development of a jobs strategy for the SFPUC's energy efficiency program. Green For All would work to develop job opportunities for disadvantaged San Francisco residents that involved energy efficiency upgrades to municipal buildings. The contract specified payments totaling \$200,000 to Green For All, over a period of approximately one year. Email correspondence shows that Respondent Ellis was a proponent of entering into the contract with Green For All and encouraged others at the SFPUC to consider them for the contract. On multiple occasions between July of 2011 and July of 2012, Respondent Ellis contacted staff of the SFPUC, organized and attended meetings, and participated in discussions concerning contracts with Green For All. Respondent was also involved in negotiations on a secondary contract, where Green For All would have provided four training workshops, commencing in May or June of 2012, at a cost of \$50,000. The purchase order for the \$50,000 was not approved by the Controller's Office, on the basis that it constituted professional services that should be done through an existing contract.

The contract would have a significant effect on Green For All, as payments for services under the contract were to total \$200,000.

FPPC VIOLATION

COUNT 1

INFLUENCING A GOVERNMENTAL DECISION IN WHICH THE OFFICIAL HAS A FINANCIAL INTEREST

1. Respondent Was a Public Official as Defined by the Act

As the Assistant General Manager for External Affairs of the San Francisco Public Utilities Commission, Respondent was a public official as defined in Section 82048, and was therefore subject to the prohibition against participating in making a governmental decision in which she has a financial interest under Section 87100.

2. Respondent Attempted to Use Her Official Position to Influence a Governmental Decision

Between June and July of 2012, Respondent Ellis contacted staff of the SFPUC, attended meetings, and participated in discussions concerning contracts with Green For All. Consequently, Respondent attempted to use her official position to influence a governmental decision for purposes of Regulation 18702.3, subdivision (b).

3. Respondent Had an Economic Interest in a Source of Income

At the time of the governmental decisions, Respondent received income from Green For All. As the income totaled \$500 or more in the preceding 12 months, Respondent had an economic interest in a source of income for the purposes of section 87103, subdivision (c).

4. Respondent's Economic Interest Was Directly Involved in the Decisions

Respondent's source of income was the subject of decisions concerning contracts, as it was a named party in the contracts. Therefore, the governmental decisions concerning contracts with Green For All directly involved Respondent Ellis' source of income under Regulation 18704.1, subdivision (a)(2).

5. Applicable Materiality Standard

Because Respondent's source of income was directly involved in the governmental decision, any financial effect of the decisions on the source of income is presumed to be material. (Regulation 18705.3, subdivision (a))

6. It Was Reasonably Foreseeable That the Applicable Materiality Standard Would Be Met

The governmental decisions which Respondent attempted to use her official position to influence called for payments totaling \$200,000 to Green For All for services. As the terms of payment were specifically enumerated under the contracts, it was resonantly foreseeable the applicable materiality standard would be met.

By attempting to use her official position to influence governmental decisions in which she had a financial interest, Respondent Ellis violated section 87100 of the Act.

III. SFEC INVESTIGATION

SUMMARY OF APPLICABLE CITY AND COUNTY LAW

Conflicts of Interest

SF C&GCC Section 3.206(a) provides that no officer or employee of the City and County shall make, participate in making, or seek to influence a decision of the City and County in which the officer or employee has a financial interest within the meaning of California Government Code Section 87100 et seq. and any subsequent amendments to these Sections.

SF C&GCC Section 3.206(b) provides that no officer or employee of the City and County shall make a contract in which he or she has a financial interest within the meaning of California Government Code Section 1090 et seq. and any subsequent amendments to these Sections.

In order to determine whether a violation has occurred, one must establish whether 1) the individual with the potential conflict of interest is a public official; 2) the decision involves a contract and whether that contract is ultimately executed; 3) the individual made or participated in making the contract; and 4) the official has or had a financial interest in the contract.

Prohibition on Incompatible Activities

SF C&GCC section 3.218(a) provides that no officer or employee of the City and County may engage in any employment, activity, or enterprise that the department, board, commission, or agency of which he or she is a member or employee has identified as incompatible in a Statement of Incompatible Activities.

Statement of Incompatible Activities for SFPUC

Section III.A.1 of the SFPUC Statement of Incompatible Activities ("SIA") states that unless otherwise noted in this section or an advance written determination under Section III.C concludes that such activities are not incompatible, the following activities are expressly prohibited by this section:

- (a) No officer or employee may directly or indirectly solicit or accept personal loans (other than loans from commercial lending institutions made in the lender's regular course of business on terms available to members of the public without regard to the officer's or employee's official status), gifts, gratuities, business, compensation, or favors from public jurisdictions, water or power agencies, private business firms or their agents that have a contract with the PUC, that have had a contract with the PUC during the past 12 months, or that are seeking to enter into a contract with the PUC.

Section III.C of the SIA permits an officer or employee to seek an Advance Written Determination whether a proposed outside activity is prohibited because it is inconsistent or otherwise in conflict with the officer's or employee's duties. The requestor must provide, in writing, a description of the proposed activity and an explanation of why the activity is not incompatible under the SIA. An advance written determination by the department that an activity is not incompatible with the SIA provides the Requestor immunity from any subsequent enforcement action for a violation of the SIA, if the material facts are as presented in the Requestor's written submission.

SUMMARY OF SFEC FINDINGS

Respondent Ellis, as the Assistant General Manager of External Affairs at SF PUC, is and was a public official. According to the terms of the \$200,000 contract, Green For All would perform the professional services and SF PUC would pay Green For All \$200,000 for its services. This contract was executed in July 2012. Respondent was involved in preliminary discussions about, negotiations related to, and planning for the scope of the contract from July 2011 to July 2012. Respondent received income from Green For All between June 2012 and January 2013.

Respondent filed a Certificate of Ethics Training, required by California Government Code section 53235 (AB 1234), with the Ethics Commission on June 26, 2012. In that filing, Respondent certified that she completed a self-study training course prepared by the City Attorney's Office, which included completion of a self-study test on June 15, 2012.

Respondent was a member of the Board of Directors of Green For All from 2009 to January 2013. Respondent Ellis disclosed income from Green For All for work she performed as its acting Executive Director from June 2012 to January 2013; Green For All paid Respondent \$2,000 per month from June 2012 to January 2013. In May 2013, Respondent voluntarily returned all payments she received from Green For All, which totaled approximately \$17,000. In May 2013, Green For All returned all payments received from SFPUC and SFPUC retained all of its previously produced work product.

SFPUC's SIA went into effect in 2008. While Respondent informed upper-level management at SFPUC of her position on the Board of Green For All, she did not seek an advance written determination from SF PUC that receiving income from Green for All would not be inconsistent or incompatible with the SF PUC's SIA.

SFEC VIOLATIONS

COUNTS 1 & 2

INFLUENCING A GOVERNMENTAL DECISION IN WHICH THE OFFICIAL HAS A FINANCIAL INTEREST

SF C&GCC Section 3.206(a) incorporates the California Political Reform Act Section 87100 et seq., which prohibits any City officer or employee from making, participating in making, or seeking to influence a decision of the City in which he or she has a financial interest.

By attempting to use her official position to influence governmental decisions in which she had a financial interest, Respondent violated Section 87100 of the Government Code and therefore also violated SF C&GCC Section 3.206(a).

COUNT 3

CONTRACTS, SALES AND PURCHASES MADE IN OFFICIAL CAPACITY

SF C&GCC Section 3.206(b) incorporates California Government Code Section 1090, et seq. which prohibits any City officer or employee from making a contract in which he or she has a financial interest.

In order to determine whether a violation has occurred, one must 1) establish whether the individual with the potential conflict of interest is a public official; 2) establish whether the decision involves a contract and whether that contract is ultimately executed; 3) establish whether the individual made or participated in making the contract; and 4) establish whether the official has or had a financial interest in the contract.

Ms. Ellis, as the Assistant General Manager of External Affairs at SF PUC, is and was a public official. According to the terms of the \$200,000 contract, Green For All would perform the professional services and SF PUC would pay Green For All \$200,000 for its services. This contract was executed in July 2012. Respondent was involved in preliminary discussions about,

negotiations related to, and planning for the scope of the contract from July 2011 to July 2012. Respondent received income from Green for All from June 2012 through January 2013. As the source of that income was Green For All, a party of the contract, Respondent had a financial interest in the contract between Green for All and SF PUC. Respondent remained on the Board of Green for All and was paid by Green for All until January 2013. Therefore, Respondent violated SF C&GCC Section 3.206(b) by her participation in making the contract.

COUNT 4 INCOMPATIBLE ACTIVITIES

SF C&GCC section 3.218(a) prohibits a City officer or employee from engaging in any employment, activity, or enterprise that the department or agency of which he or she is a member has identified as incompatible in a statement of incompatible activities.

The SFPUC's SIA went into effect in 2008. Section III.A of PUC's SIA outlines activities that conflict with official duties; Section III.A applies to all PUC officers and employees. Section III.A.1.a expressly prohibits an officer or employee from directly or indirectly soliciting or accepting compensation from private business firms that have a contract with PUC, that have had a contract with PUC during the last 12 months, or that are seeking to enter into a contract with PUC. Section III.C sets forth the procedure by which an employee may seek an advance written determination whether a proposed activity is subject to review by the department, or is otherwise incompatible, and therefore prohibited by the department's SIA.

In this case, Respondent received compensation from Green For All from June 2012 through January 2013. In June 2012, Respondent began providing additional services for Green For All and began receiving \$2,000 per month for those additional services. From July 2011 to July 2012, Green For All was seeking to enter into a contract with SF PUC. From July 2012 to May 2013, Green For All had a contract with PUC. Section III.A.1.a. of SF PUC's SIA expressly prohibited Respondent from receiving compensation from Green For All from July 2011 to May 2013. Unless she sought and received an advance written determination from SF PUC that it was permissible for her to receive compensation from Green For All, Respondent was not permitted to receive compensation from Green For All. Respondent did not seek an advance written determination from the department regarding the compensation she received from Green For All. Therefore, Respondent violated section 3.218(a) of SF C&GCC.

FPPC PENALTY DISCUSSION

This matter consists of one count of violating the Act carrying a maximum administrative penalty of \$5,000.

In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6): the seriousness of the violations; the presence or lack of

intent to deceive the voting public; whether the violation was deliberate, negligent, or inadvertent; whether the Respondent demonstrated good faith in consulting with Commission staff; and whether there was a pattern of violations.

Respondent Ellis should have known of the conflict of interest requirements pertaining to sources of income. There is no history of prior violations of the Act by Respondent. Respondent cooperated fully with the investigation.

The making of a governmental decision in which an official has a financial interest is one of the more serious violations of the Act as it creates the appearance that a governmental decision was made on the basis of public official's financial interest. Respondent participated in making governmental decisions involving an entity in which she had a financial interest. Respondent properly disclosed her position with Green For All and the corresponding income on her SEIs. Respondent voluntarily paid back the income she received from Green for All. The typical administrative penalty for a conflict-of-interest violation, depending on the facts of the case, has been in the middle range of available penalties.

Other similar cases regarding a violation of Section 87100 that have been recently approved by the Commission include:

In the Matter of Tim Ward, FPPC Case No. 05/652, had a similar fact pattern; involving a municipal design review commission member and architect, who recommended approval of a client's project to fellow commission members, despite the existence of an obvious conflict. The agreed upon penalty in that case, approved by the Commission on June 12, 2008, was \$3,000.

Another similar case, *In the Matter of Clay Aurell*, FPPC No. 11/650, involved a Respondent who had a partnership interest in an architectural firm and was a member of the Architectural Board of Review for the City of Santa Barbara. Respondent and his architectural firm were representing a client in connection with a proposal to construct an accessory dwelling unit in the City of Santa Barbara. In this matter, Respondent attempted to use his official position to influence a governmental decision on the proposal knowing he had a financial interest in the matter. The agreed upon penalty in that case, approved by the Commission on March 15, 2012, was \$3,500 for the count.

The facts of this case, including the aggravating and mitigating factors discussed above, justify imposition of the agreed upon penalty of Three Thousand Five Hundred Dollars (\$3,500).

SFEC PENALTY DISCUSSION

This matter consists of four counts of violations of the SF C&GCC carrying a maximum administrative penalty of \$5,000 per violation for a total of \$20,000.

When determining penalties, the Ethics Commission considers all of the relevant circumstances surrounding the case, including but not limited to: (a) the severity of the violation; (b) the presence or absence of any intention to conceal, deceive, or mislead; (c) whether the

violation was deliberate, negligent or inadvertent; (d) whether the violation was an isolated incident or part of a pattern; (e) whether the respondent has a prior record of violations of law; and (f) the degree to which the respondent cooperated with the investigation and demonstrated a willingness to remedy any violations.

Government decisions by City officers and employees should be made, and should appear to be made, on a fair and impartial basis. Because the decisions at issue do not meet this criteria, these violations constitute one of the more serious violations of SF C&GCC.

Respondent should have known about the conflict of interest requirements pertaining to sources of income. Prior to joining the SF PUC as Assistant General Manager in November 2010, Respondent was a Commissioner of SF PUC for two years. In June 2012, Respondent filed a Certificate of Ethics Training with the Ethics Commission. In signing this statement, Respondent certified that she had completed a self-study training course prepared by the City Attorney's Office, which included a self-study test. Financial conflicts of interest, including sources of income that may create a conflict of interest, are discussed within the first ten minutes in the course prepared by the City Attorney's Office.

Respondent repeatedly participated in making governmental decisions involving an entity in which she had a financial interest.

Respondent has no prior history of violations of SF C&GCC with the Ethics Commission.

Respondent was extremely cooperative with the Ethics Commission's investigation.

Respondent disclosed all income received from Green for All on her Statements of Economic Interests (Form 700).

In May 2013, Respondent voluntarily returned all payments she received in 2012 to Green for All, which totaled approximately \$17,000.

IV. CONCLUSION

After consideration of the factors of Regulation 18361.5, the facts of this case and consideration of penalties in prior enforcement actions, the Enforcement Division of the FPPC recommends the imposition of the agreed upon penalty of Three Thousand Five Hundred Dollars (\$3,500), and the SFEC recommends a penalty of Two Thousand Five Hundred Dollars (\$2,500) per count for Counts 3 and 4, for a total agreed upon penalty of Eight Thousand Five Hundred Dollars (\$8,500).



ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

Memorandum

To: Members, Ethics Commission

From: John St. Croix, Executive Director

Re: Fiscal Year 2014/2015 Budget Request

Date: January 22, 2014

JAN 23 2014

The Mayor's office has provided the customary budget target to all City departments, which have been asked to submit a savings equal to 1.4 percent of the department's base General Fund support for the upcoming fiscal year and another 1.85 percent for the following year. This would mean a cut of \$36,752 for FY 14-15 and \$49,002 for FY 15-16.

Our budget in the current fiscal year breaks down as follows:

Operating budget	\$2,628,391
<u>Election Campaign Fund</u>	<u>1,903,559</u>
	\$4,531,950

In the current fiscal year, we have been able to fill the vacant Education and Outreach Coordinator Position and also to replace an Auditor position that was vacated due to a retirement. We plan to fill the vacant Investigator Position; however, the requested cuts from the Mayor's Budget Office would deplete the funds required to maintain this position. Further, those requested cuts would cut our customary annual budget for temporary staff of \$100,000 by two-thirds.

As is the usual case, should the Commission decide to accept the cuts, or should the City require the Ethics Commission to accept the cuts, 100 percent of the funds will have to come from salaries and benefits. There are insufficient funds remaining in other accounts to meet the requested targets. The amount of the intended cut is not sizeable, but it will create a small deficit that will have to be overcome.

My recommendation at this time is to a budget increase of \$22,500. This figure is based on a request for an operating budget at 100% of the current fiscal year funding of \$2,628,391 plus the annual deposit into the Election Campaign Fund of \$1,906,395 (this amount is mandated by ordinance), and an additional \$22,500, which is the

contractually required increase in our payment to Netfile for electronic filing services. This would allow us to hire and keep a third Investigator and allow for the full \$100,000 allotted for temporary staff services during the upcoming fiscal year.

For your information, the balance in the Election Campaign Fund as of today is \$4,358,530. Projected disbursement in the upcoming Fiscal Year for the Board of Supervisors Races in 2014 are \$507,611.

The historical funding of the Ethics Commission is as follows:

FY 94 – 95	157,000
FY 95 - 96	261,000
FY 96 - 97	313,274
FY 97 - 98	394,184
FY 98 - 99	475,646
FY 99 - 00	610,931
FY 00 - 01	727,787
FY 01 - 02	877,740
FY 02 – 03	1,156,295
FY 03 - 04	909,518
FY 04 - 05	1,052,389
FY 05 – 06	1,382,441
FY 06 – 07	8,416,109 (1,711,835 non-grant funding)*
FY 07 – 08	3,592,078 (2,261,877 non-grant funding)**
FY 08 - 09	5,453,874 (2,241,818 non-grant funding)
FY 09 - 10	6,011,566 (2,283,368 non-grant funding)***
FY 10 – 11	4,188,720 (2,212,226 non-grant funding)****
FY 11 – 12	4,269,979 (2,259,979 non-grant funding)*****
FY 12 – 13	4,155,547 (55,547 non-grant funding)*****
FY 13 – 14	4,531,950 (2,431,950 non-grant funding)

*Includes \$6,704,274 front-loaded funding for Mayoral Election Campaign Fund

**Includes \$1,358,747 annual set-aside for the Election Campaign Fund

***Does not include \$85,205 mid-year budget reduction; includes \$1,783,858 restoration of funds previously taken from Election Campaign Fund

****Does not include \$53,256 mid-year reduction

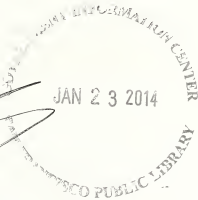
*****Does not include \$4,079,107 in repayments to Election Campaign Fund from prior-year loans to the General Fund

*****Figures are from the Annual Appropriation Ordinance – the remainder of the Commission's operating budget came from the Election Campaign Fund (ECF). As of June 30, 2012, the ECF had \$7,713,722; the City took back \$4 million and gave back to the ECF \$1,899,308. Thus, at the beginning of FY 12-13, the ECF had \$5,613,030. Another \$2 million was taken back in FY 13-14, but the actual transaction was posted back to June 2012 for the FY 2012-13 Fiscal Year..



ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

01-23-14P05:00 RCVD



BENEDICT Y. HUR
CHAIRPERSON

JAMIE S. STUDLEY
VICE-CHAIRPERSON

BEVERLY HAYON
COMMISSIONER

DOROTHY S. LIU
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

Memorandum

To: Members, Ethics Commission

From: John St. Croix, Executive Director

Re: Fiscal Year 2014/2015 Budget Request

Date: January 22, 2014

The Mayor's office has provided the customary budget target to all City departments, which have been asked to submit a savings equal to 1.4 percent of the department's base General Fund support for the upcoming fiscal year and another 1.85 percent for the following year. This would mean a cut of \$36,752 for FY 14-15 and \$49,002 for FY 15-16.

Our budget in the current fiscal year breaks down as follows:

Operating budget	\$2,628,391
<u>Election Campaign Fund</u>	<u>1,903,559</u>
	\$4,531,950

In the current fiscal year, we have been able to fill the vacant Education and Outreach Coordinator Position and also to replace an Auditor position that was vacated due to a retirement. We plan to fill the vacant Investigator Position; however, the requested cuts from the Mayor's Budget Office would deplete the funds required to maintain this position. Further, those requested cuts would cut our customary annual budget for temporary staff of \$100,000 by two-thirds.

As is the usual case, should the Commission decide to accept the cuts, or should the City require the Ethics Commission to accept the cuts, 100 percent of the funds will have to come from salaries and benefits. There are insufficient funds remaining in other accounts to meet the requested targets. The amount of the intended cut is not sizeable, but it will create a small deficit that will have to be overcome.

My recommendation at this time is to a budget increase of \$22,500. This figure is based on a request for an operating budget at 100% of the current fiscal year funding of \$2,628,391 plus the annual deposit into the Election Campaign Fund of \$1,906,395 (this amount is mandated by ordinance), and an additional \$22,500, which is the

contractually required increase in our payment to Netfile for electronic filing services. This would allow us to hire and keep a third Investigator and allow for the full \$100,000 allotted for temporary staff services during the upcoming fiscal year.

For your information, the balance in the Election Campaign Fund as of today is \$4,358,530. Projected disbursement in the upcoming Fiscal Year for the Board of Supervisors Races in 2014 are \$507,611.

The historical funding of the Ethics Commission is as follows:

FY 94 - 95	157,000
FY 95 - 96	261,000
FY 96 - 97	313,274
FY 97 - 98	394,184
FY 98 - 99	475,646
FY 99 - 00	610,931
FY 00 - 01	727,787
FY 01 - 02	877,740
FY 02 - 03	1,156,295
FY 03 - 04	909,518
FY 04 - 05	1,052,389
FY 05 - 06	1,382,441
FY 06 - 07	8,416,109 (1,711,835 non-grant funding)*
FY 07 - 08	3,592,078 (2,261,877 non-grant funding)**
FY 08 - 09	5,453,874 (2,241,818 non-grant funding)
FY 09 - 10	6,011,566 (2,283,368 non-grant funding)***
FY 10 - 11	4,188,720 (2,212,226 non-grant funding)****
FY 11 - 12	4,269,979 (2,259,979 non-grant funding)*****
FY 12 - 13	4,155,547 (55,547 non-grant funding)*****
FY 13 - 14	4,531,950 (2,431,950 non-grant funding)

*Includes \$6,704,274 front-loaded funding for Mayoral Election Campaign Fund

**Includes \$1,358,747 annual set-aside for the Election Campaign Fund

***Does not include \$85,205 mid-year budget reduction; includes \$1,783,858 restoration of funds previously taken from Election Campaign Fund

****Does not include \$53,256 mid-year reduction

*****Does not include \$4,079,107 in repayments to Election Campaign Fund from prior-year loans to the General Fund

*****Figures are from the Annual Appropriation Ordinance – the remainder of the Commission's operating budget came from the Election Campaign Fund (ECF). As of June 30, 2012, the ECF had \$7,713,722; the City took back \$4 million and gave back to the ECF \$1,899,308. Thus, at the beginning of FY 12-13, the ECF had \$5,613,030. Another \$2 million was taken back in FY 13-14, but the actual transaction was posted back to June 2012 for the FY 2012-13 Fiscal Year..



ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

JAN 23 2014

EXECUTIVE DIRECTOR'S REPORT TO THE SAN FRANCISCO ETHICS COMMISSION For the Regular Meeting of January 27, 2014

BEVERLY HAYON
CHAIRPERSON

PAUL A. RENNE
VICE-CHAIRPERSON

BRETT ANDREWS
COMMISSIONER

BENEDICT Y. HUR
COMMISSIONER

PETER KEANE
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

1. Budget/Staffing.

As previously reported, the Outreach/Education Officer position has been filled. Since the last report, the open Auditor position has also been filled. The planned hiring to fill the open Investigator position is pending results of the upcoming budget request. At this month's meeting, the Commission will consider the budget request for the next fiscal year (2014/15). Staff has prepared a separate memo regarding this request.

2. Investigation and enforcement program.

As of January 21, 2014, there were 21 pending formal complaints alleging violations within the Ethics Commission's jurisdiction.

Category	# of Complaints
Campaign Finance	15
Conflict of Interest	3
Governmental Ethics	0
Lobbyist Ordinance	0
Campaign Consultant Ordinance	2
Sunshine Ordinance	1
TOTAL	21

3. Campaign finance disclosure program.

a. Filing deadline. The most recent filing deadline was on October 24, 2013 for the Second Pre-Election statement, which covers the reporting period ending October 19, 2013. The next filing deadline is January 31, 2014 for the First Semi Annual statement, which covers the reporting period ending December 31, 2013.

Due to recent changes to the Campaign Finance Reform Ordinance and Ethics Commission regulations, all committees must now file electronic statements and complete the electronic signature requirements. Staff has informed treasurers and candidates about the new requirements and has provided detailed instructions. Staff continues to inform and assist committees during this transition.

b. Collection of late filing fees and contribution forfeitures. In the FY 13-14, as of December 31, the Commission collected a total of \$3,614 in campaign finance late fees and forfeitures. Outstanding late fees and forfeitures total \$24,686, of which waiver requests are pending for \$210; and \$13,260 is pending at the Bureau of Delinquent Revenues (BDR).

c. Status of accounts to San Francisco Bureau of Delinquent Revenues (BDR). The following chart provides details on active accounts referred to BDR as of October 31, 2013:

#	Committee/ Filer	ID #	Treasurer or Responsible Officer	Date referral effective	Original amount referred	Last month's balance	Current balance (Changes are in bold)
1	Johnny K. Wang JKW Political Consulting	100716	Johnny K. Wang	4/19/11	\$4,000	\$4,000	\$4,000
2	Coalition to Elect Chris Jackson to Community College Board	1302351	Chris Jackson	6/17/11	\$2,658.90	\$2,658.90	2,658.90
3	Chris Jackson For Community College Board	1347066	Chris Jackson	7/12/13	\$6,600.94	\$6,600.94	\$6,600.94
						TOTAL	\$13,260

4. Revenues report.

For FY 13-14, the Commission is budgeted to generate \$100,000 in revenues. As of January 21, 2014, the Commission received \$32,710, as summarized below. The figure represents collection of approximately .32 percent of expected revenues for FY 13-14.

Revenues received as of January 21, 2014:

Source	Budgeted Amount FY 13-14	Receipts
Lobbyist Fees	\$27,000	\$19,000
Other Ethics General	\$1,000	\$4
Campaign Finance Fines	\$50,000	\$3,614
Campaign Consultant Fees	\$18,000	\$3,150
Lobbyist Fines	\$1,000	\$100
Statements of Economic Interests Fines	\$1,000	\$1,510
Other Ethics Fines	\$1,000	\$4,663
Campaign Consultant Fines	\$1,000	\$50
Unallocated	\$0	\$0
Total	\$100,000	\$32,091

5. Lobbyist program.

As of January 21, 2014, 95 individual lobbyists were registered with the Commission. Total revenues collected to date for the 2013-2014 fiscal year amount to \$19,100, with \$19,000 in lobbyist registration fees and \$100 in fines. The filing deadline for the next lobbyist disclosure statement is February 17, 2014.

6. Campaign Consultant program.

As of January 21, 2014, 17 campaign consultants were registered with the Commission. \$3,200 in registration fees and fines had been collected so far during the 2013-2014 fiscal year. In addition, a \$200 refund was paid to a consultant who had overpaid fees in fiscal year 2012-2013. The next campaign consultant quarterly report deadline is Monday, March 17, 2014. Staff will send reminders to all active campaign consultants before the deadline.

7. Statements of Economic Interests.

On January 2, 2014, the Commission's electronic filing system, NetFile, became available to the City's 527 elected officials, department heads and members of decision-making boards or commissions who are now required to file their Form 700 electronically. As of January 21, 2014, 27 Form 700s have been filed.

In preparation for the April 1, 2014 due date for Form 700, a memorandum outlining the duties of Department Heads and Filing Officers has been circulated, and trainings have been scheduled for February 5, 2014 and March 5, 2014. Two additional training sessions will be offered if there is sufficient interest.

Staff has identified 139 individuals who failed to have current Certificates of Ethics Training on file with the Commission. These individuals will be contacted and advised to provide current Certificates immediately.

8. Outreach and Education.

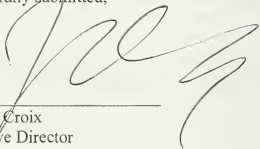
On December 2, 2013, staff met with a group of delegates from central and local departments of human resources and social security of China regarding the Commission's effort in promoting the high standards of ethical behavior among government employees.

On December 12, 2013, staff met with a group of members of the Chinese General Administration of Customs to discuss the mission and function of the Commission and ethical standards of conduct for civil servants.

The Commission continues to offer trainings on Statements of Incompatible Activities to City departments via web trainings. The following are web video trainings available on the Commission website:

- Department of Building Inspection SIA Training
- Candidates' Training
- Controller's Office SIA Training
- Department on the Environment SIA Training
- Governmental Ethics Ordinance Training for City Employees
- Lobbyist Ordinance Training
- Medical Examiner's Office SIA Training
- Non-Candidate Recipient Committee Training
- Public Utilities Commission SIA Training
- SIA Template Language Training

Respectfully submitted,



John St. Croix
Executive Director

S:\ED Report\2013\1.27.2014.doc



ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

01-23-14P05:20 RCVD

JAN 23 2014

BEVERLY HAYON
CHAIRPERSON

Date: January 2014
To: Interested Persons

PAUL A. RENNE
VICE-CHAIRPERSON

From: John St. Croix, Executive Director

BRETT ANDREWS
COMMISSIONER

Re: Interested persons list

BENEDICT Y. HUR
COMMISSIONER

PETER KEANE
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

Under section 8.17 of the Administrative Code, each board, commission or committee thereof, must update its mailing lists at least once annually for the meetings of its respective board, commission or committee in order to remove addresses of individuals or organizations that are no longer interested in receiving the materials or no longer residing or operating at the listed address.

In addition, the Brown Act provides, "[a]ny request for mailed copies of agendas or agenda packets will be valid for the calendar year in which it is filed, and must be renewed following January 1 of each year." Government Code § 54954.1.

Interested Persons may choose to receive paper or email notifications. Paper notifications include agenda notices and press releases. In addition, you may request to receive paper copies of supporting documents for the Commission's monthly meeting. To subscribe to receive paper notifications, please complete the information below and mail or fax to the Ethics Commission.

Email notifications include agenda notices (including links to supporting documents), press releases, training opportunities and other communications. **To subscribe to receive email notifications, go the Commission's homepage: www.sfethics.org.** If you currently subscribe to receive email notifications, you will continue to receive emails until you choose to unsubscribe.

Request to receive PAPER notifications:

Name _____
(please print)

Full Address _____

Phone _____

☐

Please check this box if you wish to receive hard copies of Commission meeting supporting documents.

[DRAFT]
Minutes of the Regular Meeting of
The San Francisco Ethics Commission
January 27, 2014
Room 400, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

GOVERNMENT
DOCUMENTS DEPT

FEB 21 2014

SAN FRANCISCO
PUBLIC LIBRARY

I. Call to order and roll call.

Chairperson Hayon called the meeting to order at 5:32 PM.

COMMISSION MEMBERS PRESENT: Beverly Hayon, Chairperson; Paul Renne, Vice-Chairperson; Brett Andrews, Commissioner; Benedict Y. Hur, Commissioner; Peter Keane, Commissioner. Chairperson Hayon wished everyone a Happy New Year.

STAFF PRESENT: John St. Croix, Executive Director; Catherine Argumedo, Investigator/Legal Analyst.

OFFICE OF THE CITY ATTORNEY: Josh White, Deputy City Attorney (DCA).

OTHERS PRESENT: Dr. Derek Kerr; Francisco Da Costa; Dr. Sandra Hernandez; and unidentified members of the public.

MATERIALS DISTRIBUTED:

- Proposed Stipulation re: Complaint No. 11-130606 and Joint Exhibit with the Fair Political Practices Commission;
- Staff Memorandum re: Ethics Commission Budget, dated January 22, 2014;
- Draft minutes of the Commission's Regular Meeting of November 25, 2013;
- Executive Director's Report.

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

Dr. Derek Kerr stated that a state law now prohibits anticipatory retaliation. He stated that the Commission took over two years to adjudicate his 2009 complaint. He stated that he received a \$750,000 settlement from a lawsuit. He stated that inadequate investigation and habitual dismissal of complaints is a type of official misconduct.

The following written summary was provided by the speaker, Dr. Derek Kerr, the content of which is neither generated by, nor subject to approval or verification of accuracy by, the Ethics Commission:

Please note that Senate Bill 496 has expanded protections for California whistleblowers. It prohibits "anticipatory retaliation", whereby employers retaliate because they believe an employee *may* disclose information to authorities. Retaliation sometimes precedes the actual whistleblowing.

I'd like to acknowledge your unprecedented finding of a conflict of interest by a City official. Previously, such complaints were routinely dismissed, and complainants thrown under the bus.

It took you over 2 years to adjudicate our 2009 complaint involving former Health Director Mitchell Katz. For 3 years, he collected \$10,000 annually in consulting fees from HMA - a for-profit

corporation working with his approval for his Department. You dismissed that complaint - and our subsequent retaliation claim. It took a lawsuit to get vindication and a \$750,000 settlement.

Your inadequate investigation and habitual dismissal of whistleblower complaints is a type of official misconduct.

Francisco Da Costa stated that when the Commission was created, San Francisco residents wanted the right thing to be done. He stated that there is rampant corruption in some city governments. He stated that arrogance is uncalled for and that this type of arrogance cries to heaven for justice.

Dr. Sandra Hernandez commented on the Respondent in Agenda Item III, Juliet Ellis. She stated that she has known Ms. Ellis for many years and that the violations were committed not out of malice or self-interest. She urged the Commissioner to accept staff's recommendation.

An unidentified member of public stated that Ms. Ellis caused many problems in her community of Bayview Hunters Point. She stated that her community does not receive any benefits and that Ms. Ellis should not have become an administrator. She thought Ms. Ellis would be good for the community.

III. Discussion and possible action regarding Ethics Complaint No. 11-130606 (Respondent: Juliet Ellis, San Francisco Public Utilities Commission (PUC)).

Executive Director John St. Croix introduced the item. He explained that this matter would have been heard in closed session, but that it would be discussed in open session as the Fair Political Practices Commission (FPPC) had previously deliberated the joint exhibit.

Commissioner Keane stated he received a memorandum with the proposed stipulation and joint exhibit, which stated that the Commission would not discuss the matter and the stipulation would be considered adopted by the Commission unless one Commissioner requested to calendar the item. He stated that he did not understand that procedure. He stated that he agreed with the stipulation, but did not understand that the matter would come with the presumption that it would not be discussed. He stated that educating the public on this issue is important. He stated that this stipulation indicates that staff has been doing its job, contrary to what some members of the public have stated during previous meetings. Executive Director St. Croix explained the procedure in the Commission's Enforcement Regulations. He stated that some matters that come before the Commissioners are not that complex and any Commissioner has the ability to calendar any matter. He also stated that Commission would normally discuss this proposed stipulation in closed session.

Commissioner Hur stated that the Enforcement Regulations had been changed to allow any one Commissioner to calendar an item. He stated that this matter would have been calendared, even if Commissioner Keane had not requested it. He stated that a discussion of a procedure change should be for another time.

Commissioner Keane stated that, in regards to the procedure, it should be something routinely calendared for discussion and have the staff discuss the case and the investigation and let the public know what was done relating to a conflict of interest violation by a high-level official. He stated that the Commission should change the procedures and that the public should hear the Commission discuss something like this matter. Chairperson Hayon suggested that Commissioner Keane bring up the issue later during items for future meetings so that the Commission may discuss a possible change in procedure in the future.

Vice-Chairperson Renne stated that he did not understand Commissioner Keane's concerns as the stipulation explains the facts and it is a public document so the public can read it. He stated that the

Commission is being asked whether it concurs with the findings. He stated that this document is for the public and explains why what Ms. Ellis did is a violation of law. He stated that if we are going to challenge staff, then that initially must occur in closed session.

Commissioner Keane stated that he is not challenging the staff, he is complementing staff. He stated that the discussion is in public session, not closed session. DCA White stated that the Commissioners' discussion was straying too far from the listed agenda item and suggested that the Commissioners have this discussion at a later time once it has been properly agendized. Chairperson Hayon stated that this discussion is occurring in public today because of the FPPC's prior deliberation.

Commissioner Andrews stated that because the matter was heard at the FPPC, it seems like the Ethics Commission is being forced to have a discussion in public that may not be complete. He stated that the Commission did not have an opportunity to discuss the matter in closed session.

Commissioner Keane asked what would happen if the stipulation was not approved. Executive Director St. Croix stated that the FPPC would most likely sever their portion and the Ethics Commission would need to renegotiate the matter with the Respondent regarding the local violations. Commissioner Keane asked whether the Commission could go into more detail with respect to deliberations of the stipulation, such as background of the investigation and statements from PUC officials. Executive Director explained that the substance of investigations are confidential.

Commissioner Hur asked about the status of the contract between Green For All and PUC. He then asked about certain factors mentioned in the penalty discussion. Investigator/Legal Analyst Argumedo stated that the violations were among the more serious violations within the Commission's jurisdictions and that staff took into consideration that the Ms. Ellis paid a monetary penalty to the FPPC with respect to state violations similar to the first two counts. She then stated that she did not believe there was an intention to conceal or mislead. Commissioner Hur asked how staff came to that determination. Executive Director stated that Ms. Ellis' superiors were aware of her activities and no one informed her that she was acted inappropriately. Commissioner Andrews asked whether Ms. Ellis voted as a member of the Board of Green For All regarding the contract it entered into with PUC. Ms. Argumedo stated that she did not know whether Ms. Ellis remained as a voting member of the Board or whether she voted to enter into the contract with PUC. Commissioner Hur stated that Ms. Ellis had taken the Ethics Training and asked about her explanation of not understanding that her actions were prohibited. Ms. Argumedo stated that Ms. Ellis did not appear to understand the law.

Public Comment:

Dr. Derek Kerr stated that he appreciate Commissioner Keane's comments. He stated that there is a built-in bias and that confidentiality protects City officials. He stated that he was disheartened by the City Attorney's comment that the discussion was straying from the agenda item. He stated that he disagreed with Commissioner Keane's assessment that staff do their job.

Francisco Da Costa stated that he was disturbed. He stated that the Commission was trying to adjudicate something without going into it. He stated that the wife of the new Director for Green For All now works for Juliet Ellis. He stated that Ms. Ellis used to be a PUC Commissioner and has no standards.

Commissioner Hayon asked whether the Commission could recommend removal. Executive Director St. Croix stated that that action would be beyond the scope of authority of the Commission in this matter. He stated that the Commission could communicate with Ms. Ellis' superiors, but that it would be a separate action outside the scope of the settlement. DCA White confirmed that the Commission would need to place that discussion and/or action as a separate agenda item at a future meeting. DCA White stated that communication regarding the recommendation of an employment decision is not a penalty considered by

corporation working with his approval for his Department. You dismissed that complaint - and our subsequent retaliation claim. It took a lawsuit to get vindication and a \$750,000 settlement.

Your inadequate investigation and habitual dismissal of whistleblower complaints is a type of official misconduct.

Francisco Da Costa stated that when the Commission was created, San Francisco residents wanted the right thing to be done. He stated that there is rampant corruption in some city governments. He stated that arrogance is uncalled for and that this type of arrogance cries to heaven for justice.

Dr. Sandra Hernandez commented on the Respondent in Agenda Item III, Juliet Ellis. She stated that she has known Ms. Ellis for many years and that the violations were committed not out of malice or self-interest. She urged the Commissioner to accept staff's recommendation.

An unidentified member of public stated that Ms. Ellis caused many problems in her community of Bayview Hunters Point. She stated that her community does not receive any benefits and that Ms. Ellis should not have become an administrator. She thought Ms. Ellis would be good for the community.

III. Discussion and possible action regarding Ethics Complaint No. 11-130606 (Respondent: Juliet Ellis, San Francisco Public Utilities Commission (PUC)).

Executive Director John St. Croix introduced the item. He explained that this matter would have been heard in closed session, but that it would be discussed in open session as the Fair Political Practices Commission (FPPC) had previously deliberated the joint exhibit.

Commissioner Keane stated he received a memorandum with the proposed stipulation and joint exhibit, which stated that the Commission would not discuss the matter and the stipulation would be considered adopted by the Commission unless one Commissioner requested to calendar the item. He stated that he did not understand that procedure. He stated that he agreed with the stipulation, but did not understand that the matter would come with the presumption that it would not be discussed. He stated that educating the public on this issue is important. He stated that this stipulation indicates that staff has been doing its job, contrary to what some members of the public have stated during previous meetings. Executive Director St. Croix explained the procedure in the Commission's Enforcement Regulations. He stated that some matters that come before the Commissioners are not that complex and any Commissioner has the ability to calendar any matter. He also stated that Commission would normally discuss this proposed stipulation in closed session.

Commissioner Hur stated that the Enforcement Regulations had been changed to allow any one Commissioner to calendar an item. He stated that this matter would have been calendared, even if Commissioner Keane had not requested it. He stated that a discussion of a procedure change should be for another time.

Commissioner Keane stated that, in regards to the procedure, it should be something routinely calendared for discussion and have the staff discuss the case and the investigation and let the public know what was done relating to a conflict of interest violation by a high-level official. He stated that the Commission should change the procedures and that the public should hear the Commission discuss something like this matter. Chairperson Hayon suggested that Commissioner Keane bring up the issue later during items for future meetings so that the Commission may discuss a possible change in procedure in the future.

Vice-Chairperson Renne stated that he did not understand Commissioner Keane's concerns as the stipulation explains the facts and it is a public document so the public can read it. He stated that the

Commission is being asked whether it concurs with the findings. He stated that this document is for the public and explains why what Ms. Ellis did is a violation of law. He stated that if we are going to challenge staff, then that initially must occur in closed session.

Commissioner Keane stated that he is not challenging the staff, he is complementing staff. He stated that the discussion is in public session, not closed session. DCA White stated that the Commissioners' discussion was straying too far from the listed agenda item and suggested that the Commissioners have this discussion at a later time once it has been properly agendaized. Chairperson Hayon stated that this discussion is occurring in public today because of the FPPC's prior deliberation.

Commissioner Andrews stated that because the matter was heard at the FPPC, it seems like the Ethics Commission is being forced to have a discussion in public that may not be complete. He stated that the Commission did not have an opportunity to discuss the matter in closed session.

Commissioner Keane asked what would happen if the stipulation was not approved. Executive Director St. Croix stated that the FPPC would most likely sever their portion and the Ethics Commission would need to renegotiate the matter with the Respondent regarding the local violations. Commissioner Keane asked whether the Commission could go into more detail with respect to deliberations of the stipulation, such as background of the investigation and statements from PUC officials. Executive Director explained that the substance of investigations are confidential.

Commissioner Hur asked about the status of the contract between Green For All and PUC. He then asked about certain factors mentioned in the penalty discussion. Investigator/Legal Analyst Argumedo stated that the violations were among the more serious violations within the Commission's jurisdictions and that staff took into consideration that the Ms. Ellis paid a monetary penalty to the FPPC with respect to state violations similar to the first two counts. She then stated that she did not believe there was an intention to conceal or mislead. Commissioner Hur asked how staff came to that determination. Executive Director stated that Ms. Ellis' superiors were aware of her activities and no one informed her that she was acted inappropriately. Commissioner Andrews asked whether Ms. Ellis voted as a member of the Board of Green For All regarding the contract it entered into with PUC. Ms. Argumedo stated that she did not know whether Ms. Ellis remained as a voting member of the Board or whether she voted to enter into the contract with PUC. Commissioner Hur stated that Ms. Ellis had taken the Ethics Training and asked about her explanation of not understanding that her actions were prohibited. Ms. Argumedo stated that Ms. Ellis did not appear to understand the law.

Public Comment:

Dr. Derek Kerr stated that he appreciate Commissioner Keane's comments. He stated that there is a built-in bias and that confidentiality protects City officials. He stated that he was disheartened by the City Attorney's comment that the discussion was straying from the agenda item. He stated that he disagreed with Commissioner Keane's assessment that staff do their job.

Francisco Da Costa stated that he was disturbed. He stated that the Commission was trying to adjudicate something without going into it. He stated that the wife of the new Director for Green For All now works for Juliet Ellis. He stated that Ms. Ellis used to be a PUC Commissioner and has no standards.

Commissioner Hayon asked whether the Commission could recommend removal. Executive Director St. Croix stated that that action would be beyond the scope of authority of the Commission in this matter. He stated that the Commission could communicate with Ms. Ellis' superiors, but that it would be a separate action outside the scope of the settlement. DCA White confirmed that the Commission would need to place that discussion and/or action as a separate agenda item at a future meeting. DCA White stated that communication regarding the recommendation of an employment decision is not a penalty considered by

state or local law, but there was nothing precluding the Commission from making a recommendation. Commissioner Keane stated that the Commission has the right and power to publicize what it does.

Commissioner Renne proposed a hypothetical situation where the Commission found an egregious violation and asked whether the Commission would have the power to determine whether it is official misconduct. DCA White stated he would review the law and provide a response to Commissioner Renne.

Commissioner Hur stated that he was troubled by this case and that, although he favors resolution, he would be more comfortable if the settlement amount was more than \$10,000. He also stated that he was not convinced that there was not deliberate misconduct.

Commissioner Keane stated that the stipulation shows that Ms. Ellis admitted to corrupt actions and that they are fairly serious findings of guilt in regards to official misconduct. He stated that a finding of guilt disgraces her. He stated that if the PUC continued to employ her, it would be very strange.

Motion 14-01-27-1 (Renne/Keane) Moved, seconded, and passed (3-2; Andrews and Hur dissented) that the Commission approve the proposed Stipulation.

IV. Discussion and possible action on Ethics Commission budget.

Executive Director St. Croix stated that things have improved and that he recommends asking the Budget Office for a slight increase. He stated that the Commission received a slight increase last year, but it does not extend beyond this fiscal year. He proposed a budget that keeps those increases in place. He explained that there are two components of the Commission's budget – the Election Campaign Fund, which contains the funds for public financing, and the operating budget. Commissioner Andrews noted a discrepancy between the amounts listed as the Election Campaign Fund for this fiscal year. Executive Director St. Croix clarified that the correct figure for that fund is \$1,903,559. The Commissioners discussed the proposals.

Public Comment:

None.

Motion 14-01-27-2 (Renne/Andrews) Moved, seconded, and passed (5-0) that the Commission adopt the proposed budget.

V. Discussion and possible action on the minutes of the Commission's meeting of November 25, 2013.

Motion 14-01-27-3 (Andrews/Renne) Moved, seconded, and passed (5-0) that the Commission approve the minutes as written.

Public Comment:

None.

VI. Discussion of Executive Director's Report.

Executive Director St. Croix welcomed the Commission's new auditor, Manisha Lal. He stated that there is no longer a backlog in assessing fines or waivers for the first time since 2004. Commissioner Andrews asked Executive Director St. Croix how much staff expected to generate in revenues for the fiscal year. Executive Director St. Croix stated that expected to receive approximately \$73,000.

Commissioner Renne asked about the status of the delinquent filers. Executive Director St. Croix stated that these accounts have been sent to the Bureau of Delinquent Revenue and are pursued in court. He stated he would provide the Commission with an update on these accounts.

Public Comment:

None.

VII. Items for future meetings.

Commissioner Keane stated that he would like to put something in writing and send it to Executive Director to calendar for the Commission's next meeting. He stated that he would like to suggest procedural changes.

Public Comment:

None.

VIII. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

None.

IX. Adjournment.

Motion 14-01-27-4 (Renne/Keane) Moved, seconded, and passed (5-0) that the Commission adjourn.

The meeting adjourned at 6:55 PM.



**SAN FRANCISCO ETHICS COMMISSION
NOTICE OF REGULAR MEETING**

February 24, 2014, 5:30 P.M.

and Revised AGENDA

Room 400 City Hall

1 Dr. Carlton B. Goodlett Place, San Francisco

GOVERNMENT
DOCUMENTS DEPT

FEB 21 2014

SAN FRANCISCO
PUBLIC LIBRARY

- I. Call to order and roll call.
- II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.
- III. Election of Officers. The Commission will elect a Chair and Vice-chair to serve for the coming year. (Discussion and possible action.)
- IV. Discussion and possible action regarding existing and potential litigation. Possible Closed Session.
 - a. Public comment on all matters pertaining to Agenda Item IV, including whether to meet in closed session.
 - b. Discussion and vote to assert attorney-client privilege and convene in closed session with the City Attorney for the purpose of conferring with, or receiving advice from, the City Attorney regarding proposed settlements for existing and potential litigation under Brown Act section 54956.9(a) and 54956.9(c) and Administrative Code section 67.10(d). (Action.)
 - c. Discussion and possible action on proposed settlements in the following matters:
 - (i) *Dennis J. Herrera, in his Official Capacity as San Francisco City Attorney v. Michael Yaki*, Case No. CGC-13-535880, filed in the Superior Court of the State of California, City and County of San Francisco, on December 4, 2013.
 - (ii) Potential litigation against Ruben Grijalva for alleged violations of the City's Lobbyist Ordinance.

(Attachments: Compliant filed in *Herrera v. Yaki*, Case No. CGC-13-535880, filed on Dec. 4, 2013; proposed settlement agreement re *Herrera v. Yaki*; proposed settlement agreement re Ruben Grijalva.)

d. Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 on whether to disclose any action taken or discussions held in closed session regarding existing and potential litigation. (Action.)

Motion: The Ethics Commission moves (not) to disclose its closed session deliberations re: existing and potential litigation.

- V. Discussion and possible action on the minutes of the Commission's meeting of January 27, 2014. (Attachment: January 27, 2014 draft minutes.)
- VI. Discussion of Executive Director's Report. An update of important Ethics Commission staff activities since the previous monthly meeting. The written report, which is available at the Commission office and on its website, covers the investigation and enforcement program, revenues, campaign finance disclosure program, revenues, public financing/campaign finance audit program, lobbyist program, campaign consultant program, and outreach and education. Any of these subjects may potentially be part of the Director's presentation or discussed by the Commission. (Attachment: Executive Director's Report.)
- VII. Items for future meetings. Commissioners may propose items for future agendas and the Commission may determine the priority of these items. (Discussion.)
- VIII. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.
- IX. Adjournment.

There will be an opportunity for public comment on each agenda item.

Materials contained in the Commission packets for meetings are available for inspection and copying during regular office hours at the Ethics Commission, 25 Van Ness Avenue, Suite 220, at least 72 hours prior to meetings. Any materials distributed to members of the Ethics Commission within 72 hours of the meeting or after the agenda packet has been delivered to the members are available for public inspection at the Ethics Commission, 25 Van Ness Avenue, Suite 220, San Francisco, during normal office hours. Cell phones, pagers and similar sound-producing electronic devices: The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. The Chair may order the removal from the meeting room of any person responsible for the ringing or use of a cell phone, pager, or other similar sound-producing electronic devices.

Disability Access: The Ethics Commission meeting will be held in Room 400, City Hall, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA. The Commission meeting room is wheelchair accessible. The closest accessible BART station is the Civic Center Station at United Nations Plaza and Market Street. Accessible MUNI lines serving this location are: #42 Downtown Loop, and #71 Haight/Noriega and the F Line to Market and Van Ness and the Metro Stations at Van Ness and Market and at Civic Center. For information about MUNI accessible services call (415) 923-6142. There is accessible curbside parking adjacent to City Hall on Grove Street and Van Ness Avenue and in the vicinity of the Veterans Building at 401 Van Ness Avenue adjacent to Davies Hall and the War Memorial Complex.

To obtain a disability-related modification or accommodation, including auxiliary aids or services, to participate in a meeting, please contact the Ethics Commission at least 48 hours before the meeting, except for Monday meetings, for which the deadline is 4:00 p.m. the previous Friday. Late requests will be honored, if possible. Services available on request include the following: American sign language interpreters or the use of a reader during a meeting, a sound enhancement system, and/or alternative formats of the agenda and

minutes. Please contact the Ethics Commission (415) 252-3100 to make arrangements for a disability-related modification or accommodation.

Chemical-Based Products: In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical-based products. Please help the City accommodate these individuals.

KNOW YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE (Chapter 67 of the San Francisco Administrative Code): Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils, and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

FOR MORE INFORMATION ON YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE OR TO REPORT A VIOLATION OF THE SUNSHINE ORDINANCE, CONTACT THE SUNSHINE ORDINANCE TASK FORCE, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102-4689; phone: (415) 554-7724; fax: (415) 554-7854; email: SOTF@SFGOV.ORG. Copies of the Sunshine Ordinance can be obtained from the Clerk of the Sunshine Task Force, at the San Francisco Public Library, and on the City's website at <http://www.sfgov.org>

Lobbyist Registration and Reporting Requirements: Individuals who influence or attempt to influence local policy or administrative action may be required by the San Francisco Lobbyist Ordinance (San Francisco Campaign and Governmental Conduct Code sections 2.100 – 2.160) to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 25 Van Ness Avenue, Suite 220, San Francisco, CA 94102; telephone (415) 252-3100, fax (415) 252-3112; and website: www.sfgov.org/ethics.

S:\AGENDA\2014\2.24.2014.doc

DENNIS J. HERRERA, State Bar #139669
City Attorney
ANDREW SHEN, State Bar #232449
JOSHUA S. WHITE, State Bar #237223
Deputy City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4682
Telephone: (415) 554-4661
Facsimile: (415) 554-4745
E-Mail: joshua.white@sfgov.org

Attorneys for Plaintiff
DENNIS J. HERRERA, in his Official Capacity
as San Francisco City Attorney

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
UNLIMITED JURISDICTION

DENNIS HERRERA, in his Official Capacity
as San Francisco City Attorney,

Plaintiff,

vs.

MICHAEL YAKI, and DOES 1-100,
inclusive,

Defendants.

Case No.

**COMPLAINT FOR CIVIL PENALTIES
FOR VIOLATIONS OF SAN FRANCISCO'S
LOBBYIST ORDINANCE**

INTRODUCTION AND SUMMARY OF ALLEGATIONS

1. This is an action against Michael Yaki, a former member of the Board of Supervisors ("the Board"), for violating the City and County of San Francisco's ("City's" or "San Francisco's") lobbyist ordinance, an ordinance that Yaki himself voted for in 2000 when he was a Board member. The lobbyist ordinance aims to bring transparency to City government by requiring lobbyists to disclose who is paying them, the amount they are getting paid, and each attempt they make to influence City officials.

2. Yaki spent over a year lobbying Board members, the Mayor's Office, members of the Fire Commission, and the Fire Department on behalf of his client, Rescue Air Systems, Inc. Yet despite making more than 70 lobbying contacts, Yaki flouted the lobbyist ordinance in every way: he failed to register as a lobbyist, failed to disclose who was paying him to lobby and how much he was paid, and failed to disclose any of his lobbying contacts. With his identity as a paid lobbyist undisclosed, Yaki sometimes misrepresented who he worked for. When trying to convince two members of the Board to meet with him, Yaki told them that he was "working with constituents concerned about . . . fire safety," and he told three other Board members that he was the "attorney for a firm that advocates for increased safety engineering for firefighters."

3. The reality was far different. Yaki's client – Rescue Air Systems – paid him to persuade City officials not to modify a requirement in the City's Fire Code that certain high rises install a product made exclusively by Rescue Air Systems. That product is called a "firefighter air replenishment system" (FARS), and its purpose is to provide firefighters a way to re-fill their portable oxygen tanks by connecting them to filling stations located on every other floor of buildings that have the system installed.

4. Yaki lobbied vigorously on behalf of Rescue Air Systems. He urged Mayor Edwin Lee, through his Chief of Staff Steve Kawa, to support the FARS requirement. Yaki tried to convince Fire Chief Joanne Hayes-White and other senior Fire Department officials to appear before the Fire Commission and advocate for retaining the FARS requirement. Yaki also tried to persuade Fire Commissioners to recommend to the Board that the FARS requirement remain in the Fire Code. Yaki's lobbying efforts with the Fire Department and the Fire Commission were unsuccessful; the Fire Commission passed a motion to recommend altering the FARS requirement and providing developers with the choice to install either FARS or another method of oxygen delivery called a firefighter service elevator.

5. Unable to convince the Fire Department or the Fire Commission to support the FARS requirement, Yaki sought to convince members of the Board directly, and through their aides, to reject the Commission's recommendation and instead enact legislation preserving the FARS requirement. Yaki sent more than 40 emails to Board members and their aides and organized more than 10

1 meetings. But ultimately the Board voted to allow the alternative recommended by the Fire
2 Commission.

3 6. Despite having over 70 lobbying contacts with City officials on behalf of Rescue Air
4 Systems, Yaki failed to register as a lobbyist, failed to disclose who was paying him and how much he
5 was paid, and failed to disclose his lobbying contacts – all in violation of the lobbyist ordinance.

6 PARTIES

7 7. Plaintiff San Francisco City Attorney Dennis J. Herrera, in his official capacity,
8 prosecutes this action under San Francisco Campaign and Governmental Conduct Code Section
9 2.145(c),¹ which empowers the City Attorney to bring civil actions to enforce the lobbyist ordinance.

10 8. Defendant Michael Yaki is now and was at all relevant times an individual and resident
11 of San Francisco. Yaki's principal place of business at all relevant times was in San Francisco.

12 9. The true names and capacities of defendants sued herein under the fictitious names
13 Does 1 through 100, inclusive, are unknown to Plaintiff. Plaintiff will seek leave of court to amend
14 this Complaint to allege such names and capacities as soon as they are ascertained.

15 JURISDICTION AND VENUE

16 10. The Superior Court has jurisdiction over this action. This action is authorized by
17 Section 2.145(c).

18 11. Venue is proper in this Court because Yaki's lobbying occurred in San Francisco and
19 because Yaki's residence and principal place of business are in San Francisco.

20 FACTUAL BACKGROUND

21 I. SAN FRANCISCO'S LOBBYIST ORDINANCE.

22 12. Enacted unanimously in 2000 by a Board that included Yaki himself, the lobbyist
23 ordinance aims to bring transparency to local government by requiring lobbyists to disclose the nature
24 and extent of their lobbying efforts. The ordinance enables San Francisco residents to know how
25 much, if at all, corporations and other entities are attempting to influence the decisions of City
26 officials.

27 ¹ All further statutory references are to the San Francisco Campaign and Governmental
28 Conduct Code, except as otherwise indicated.

13. The ordinance requires a person who qualifies as a lobbyist to register with the San Francisco Ethics Commission within five days of qualifying as a lobbyist and pay a \$500 registration fee. Section 2.110(a). A lobbyist is someone who "receives or is promised economic consideration of \$3,000 or more within three consecutive calendar months for lobbyist services; and on behalf of the persons providing the economic consideration, makes any contact with an officer of the City and County." Section 2.105(g). The ordinance defines "officer of the City and County" as "any officer identified in San Francisco Administrative Code Section 1.50, as well as any official body composed of such officers." Section 2.105(k). Under Administrative Code Section 1.50, City officers include elected officials and members of Commissions appointed by the Mayor, one of which is the Fire Commission. Charter Section 4.108.

14. "Lobbyist services" are "services rendered for the purpose of influencing local legislative or administrative action, including but not limited to contacts with officers of the City and County of San Francisco." Section 2.105(h). "[L]ocal legislative or administrative action" includes "the drafting, introduction, consideration, modification, enactment, defeat, approval, veto, granting or denial by any officer of the City and County of any resolution, motion, appeal, application, petition, nomination, ordinance, amendment, approval, referral, permit, license, entitlement to use or contract." Section 2.105(i).

15. Every month, lobbyists must file with the Ethics Commission a disclosure that includes information such as who paid the lobbyist for lobbying services, how much the lobbyist was paid for those lobbying services, and each lobbying contact between the lobbyist and City officials during that month. Section 2.110(c). The term "contact" means "communication, oral or written, including communication made through an agent, associate or employee, for the purpose of influencing local legislative or administrative action." Section 2.105(d). If a lobbyist testifies at a public hearing on behalf of his client, the lobbyist must identify the client on whose behalf the testimony is offered. Section 2.105(d)(1)(B).

16. The ordinance applies equally to lawyers and nonlawyers. A lawyer who attempts to influence local legislative action has engaged in lobbying and is subject to the same disclosure

requirements as non-lawyers, unless the lawyer is “performing a duty or service that can be performed only by an attorney.” Section 2.105(d)(1)(C).

II. RESCUE AIR SYSTEMS HIRED YAKI TO CONVINCE CITY OFFICIALS NOT TO ALTER THE FARS REQUIREMENT.

17. Rescue Air Systems is a San Carlos-based company that makes a product called a Firefighter Air Replenishment System (“FARS”). The purpose of FARS is to supply firefighters with a safe and reliable source of air while they fight fires inside high-rise buildings. FARS consists of a network of pipes containing pressurized air. Firefighters can connect to those pipes at filling stations located on every other floor of buildings where the system is installed and re-fill their portable oxygen tanks. Rescue Air Systems and its President and Chief Executive Officer Anthony Turiello own patents on this system and are FARS’ exclusive manufacturers.

18. In 2004, the City added a provision to the Fire Code requiring new buildings more than 75 feet tall to install a “self-contained breathing air replenishment system.” See S.F. Fire Code § 511.2 (2004). Rescue Air Systems is the only company to manufacture a system meeting that description.

19. In 2012, then-Fire Marshal and Assistant Deputy Fire Chief Thomas Harvey began to explore the possibility of removing the FARS requirement from the City’s Fire Code and instead requiring a different method of oxygen delivery. One alternative to FARS was to require new buildings over 75 feet tall to install strengthened and pressurized firefighter service elevators, which state law already requires for buildings over 120 feet tall. At the November 20, 2012 meeting of the San Francisco Fire Commission, Fire Marshal Harvey indicated that he would be proposing amendments to the Fire Code at the Commission’s December 13, 2012 meeting.

20. Faced with the prospect of an amendment to the City’s Fire Code that would allow developers to choose an alternative to its product, Rescue Air Systems hired Yaki, who had served on the Board from 1996 until 2001, to convince City officials of the merits of FARS and persuade them that firefighter safety was best served by retaining the FARS requirement in the Fire Code.

71 III. FOR OVER A YEAR, YAKI LOBBIED ON BEHALF OF RESCUE AIR SYSTEMS
72 WITHOUT REGISTERING AS A LOBBYIST OR MAKING ANY DISCLOSURES OF
73 HIS LOBBYING ACTIVITY.

21. Starting no later than the summer of 2012 and continuing for over a year, Yaki
embarked on a lobbying campaign on behalf of Rescue Air Systems that included more than 70
lobbying contacts. Yaki's lobbying efforts included emails, texts, phone calls, and in-person meetings
with members of the Board and their aides, employees of the Mayor's Office including the Mayor's
Chief of Staff, at least three members of the Fire Commission, senior members of the Fire Department,
and the Fire Chief.

22. Although Yaki is a lawyer, his lobbying contacts did not involve performing a service
that can be performed only by an attorney. His lobbying mainly involved attempting to persuade
policymakers that Rescue Air Systems' product met the needs of firefighters better than other
products.

23. Plaintiff is unaware of the precise amount that Rescue Air Systems has paid Yaki for
lobbying services or has promised to pay Yaki for lobbying services. On information and belief,
Plaintiff alleges that Rescue Air Systems promised to pay Yaki, or did pay Yaki, more than \$3,000 to
perform lobbying services in a consecutive three month period. That three month period began on or
before July 31, 2012.

A. **Yaki Convinced City Officials to Delay the Fire Commission's Consideration of
the FARS Requirement.**

24. The Fire Commission originally planned to take up at its meeting on December 13,
2012 the issue of whether to modify the FARS requirement.

25. Yaki's lobbying efforts began at least several months before that when, on July 31,
2012, he met with Supervisor Scott Wiener, his aide Andres Powers, and Rescue Air Systems CEO
Turiello. By the time that meeting occurred, Yaki had already learned that the Fire Department
supported eliminating the FARS requirement from the Fire Code. Yaki advocated that when the Fire
Code amendments reach the Board, Supervisor Wiener should reject the recommendation of the Fire
Department and vote to preserve the FARS requirement.

26. Yaki was required to register as a lobbyist with the San Francisco Ethics Commission within five business days of his initial lobbying contact and before making any other lobbying contacts. Yaki never did so.

27. One of Yaki's lobbying goals was to urge the Board to put off consideration of the FARS requirement as long as possible. In November 2012, Yaki asked both Chief Hayes-White and Fire Marshal Harvey to have the Commission delay its consideration of the FARS requirement until 2013.² In a November 30, 2012 email to Judson True, an aide to Board President David Chiu, Yaki stated that he had succeeded in "pressuring" Fire Marshal Harvey to delay the discussion. The same day, Yaki wrote to Andrea Bruss, an aide to Supervisor Malia Cohen, informing her that "Harvey finally relented and agreed not to push this in December, unless he tried to double cross me."

28. Yaki made other requests to Chief Hayes-White and Fire Marshal Harvey to postpone consideration of the FARS requirement, and ultimately the Fire Commission did not take up the issue until its May 2013 meeting.

B. Yaki Urged Mayor Edwin Lee, Through his Chief of Staff, to Support Rescue Air Systems' Product.

29. It is unclear when Yaki first contacted the Mayor's Chief of Staff, Steve Kawa, and urged the Mayor's Office to support preserving the FARS requirement, but it apparently was before January 23, 2013. On that date, Yaki emailed Sally Leung, an assistant in the Mayor's office, and asked

Can you remind Steve he was going to set up a meeting with the Fire Chief and me? Also, please let him know (you can just print this up) that we now have contractors breaking contracts to install Firefighter Air Systems in new buildings and SFGH b/c someone in SFFD has put the word out he's going to remove it, which raises interesting issues of potential liability, not to mention who makes policy for the City.

30. Kawa arranged a meeting with Yaki and Chief Hayes-White for February 8, 2013. In advance of that meeting, Yaki emailed to Kawa, via Leung, a list of "talking points" designed to address concerns that Chief Hayes-White and Fire Marshal Harvey might raise during the meeting.

² Attached hereto as Exhibit A is the declaration of Fire Chief Hayes-White.

1 For example, one of the anticipated issues was whether firefighter service elevators were an adequate
2 alternative to FARS. Yaki's "talking point" on that topic was:

3 FACT 6: There is no "equivalent" Fire Safety elevator. After the 2007 hearing
4 before the Board of Supes, when the SFFD admitted that no such thing existed,
5 the National Institute of Fire Training has said that development and testing
6 (still underway) of a Fire Elevator is to get occupants to safety, and does not
7 replace a rigid/fixed FARS for firefighter safety. Plus, our elevators required to
8 go OUT of service during a Seismic event, so if there were a mass seismic event
9 w/ Fires (think of all the new high-rises which have gas stoves – which include
10 Infinity, One Rincon, and Millenium), elevators wouldn't work anyway.

11 C. Yaki Lobbied Chief Hayes-White to Support the FARS Requirement.

12 31. On February 8, 2013, Yaki, Kawa, and Chief Hayes-White met in City Hall, as
13 planned. At the meeting, Yaki tried to convince Chief Hayes-White to oppose modifying the FARS
14 requirement. Yaki discussed what he claimed to be the merits of the FARS requirement and
15 maintained that fire departments across the country were requiring buildings to install FARS. Yaki
16 also encouraged Chief Hayes-White to meet with Turiello, but Chief Hayes-White refused given
17 Turiello's vested interest in ensuring the preservation of the FARS requirement.

18 32. Even after the February 8 meeting, Yaki continued to lobby Chief Hayes-White. On
19 May 22, 2013, Yaki emailed the Chief asking her to once again to postpone the Fire Commission's
20 consideration of the FARS requirement and purporting to summarize what transpired at their February
21 8 meeting.

22 33. Yaki orchestrated a meeting on May 22, 2013 between Rescue Air Systems lobbyist
23 and former State Fire Marshal Ruben Grijalva and Chief Hayes-White. Grijalva endeavored
24 throughout the meeting to convince the Chief not to alter the FARS requirement, and tried to address
25 her concerns about FARS. During the meeting with Chief Hayes-White, Grijalva denied that he was
26 working for Rescue Air Systems, but when he spoke at the Fire Commission meeting five weeks later,
27 he admitted in response to a question from a Fire Commissioner that he did work for Rescue Air
28 Systems.

D. Yaki Lobbied Fire Commission President Michael Hardeman to Preserve the FARS Requirement.

34. With the Fire Commission's consideration of the FARS requirement delayed until May 2013, Yaki lobbied three members of the Fire Commission to preserve the FARS requirement.³

35. Yaki focused his efforts on Fire Commission President Michael Hardeman, who Yaki texted, emailed, and called between 50 and 100 times on behalf of Rescue Air Systems. Yaki also met in person with President Hardeman twice and urged him to meet with other Rescue Air Systems lobbyists on two other occasions.

36. The first meeting with Yaki and President Hardeman took place on October 24, 2012. Also present were Turiello and Thomas O'Connor, the President of the San Francisco Firefighters' Union, Local 798. Yaki ran the meeting, the purpose of which was to persuade President Hardeman to support preserving the FARS requirement in the City's Fire Code. Yaki and Turiello gave a presentation about the benefits of FARS, including an explanation of how the system worked and where it was used. Yaki also provided President Hardeman with brochures about FARS and letters from individuals who supported it.

37. Yaki set up another meeting with President Hardeman on January 23, 2013. In between the first and second meetings, Yaki called, texted, and emailed President Hardeman repeatedly to lobby on behalf of Rescue Air Systems. In these communications, Yaki encouraged President Hardeman to vote to preserve the FARS requirement: Yaki told President Hardeman about more people and organizations who supported FARS; he urged President Hardeman to meet with former State Fire Marshal Ronny Coleman (another paid lobbyist for Rescue Air Systems); he tried to convince President Hardeman to tour buildings in which FARS was installed; and he generally touted FARS and argued it was necessary to save firefighters' lives.

38. President Hardeman, Yaki, and O'Connor attended the meeting on January 23, 2013. This meeting followed the same pattern as the October 24 meeting and lasted about an hour. Yaki

³ Attached hereto as Exhibits B, C, and D are, respectively, the declarations of Fire Commission President Michael Hardeman and Fire Commissioners Andrea Evans and Francee Covington.

1 advocated on behalf of Rescue Air Systems' product and made arguments similar to those he had
2 made at the October 24 meeting. Yaki insisted that President Hardeman meet with Coleman.

3 39. After the January 23, 2013 meeting, the intensity and frequency of Yaki's lobbying
4 efforts increased to the point that President Hardeman stopped answering his phone when he saw that
5 Yaki was calling.

6 40. Yaki also facilitated a tour on June 10, 2013 of two buildings with FARS installed. In
7 attendance were President Hardeman, Fire Commissioner Andrea Evans, Fire Marshal Harvey, and
8 other senior members of the Fire Department. Yaki did not participate in the tour, but he had invited
9 and strongly encouraged the Fire Commissioners to participate.

10 **E. Yaki Lobbied Other Fire Commissioners on Behalf of Rescue Air Systems.**

11 41. Yaki tried to convince other Fire Commissioners to preserve the FARS requirement. In
12 about May 2013, Fire Commissioner Evans agreed to speak with Yaki by telephone. During that call,
13 Yaki tried to persuade her to oppose modifying the FARS requirement. Yaki praised FARS as a way
14 to save firefighters' lives and told Fire Commissioner Evans that more and more fire departments
15 across the country were using this system. Yaki also tried to address Fire Commissioner Evans'
16 concern that firefighters would not use FARS because they could not trust that the air coming from it
17 was safe to breathe.

18 42. On June 3, 2013, Yaki had a similar call with Fire Commissioner Francee Covington,
19 which lasted about 35 minutes. As with Fire Commissioner Evans, Yaki tried to convince Fire
20 Commissioner Covington to vote to keep the FARS requirement in the City's Fire Code. Yaki
21 discussed the superiority of the FARS systems over other methods of oxygen delivery and described a
22 trend across the country towards adoption of the FARS requirement.

23 43. Yaki also lobbied the commissioners in writing. Yaki sent several emails to Fire
24 Commission secretary Monica Quattrin and asked that she forward them to the personal email
25 accounts of the Fire Commissioners. For example, Yaki had Quattrin distribute a letter from Grijalva
26 that responded to concerns about the cost effectiveness of FARS. Yaki also sent a link to a video
27 showing the Phoenix Fire Department training on the air replenishment system to address the concern
28 that fire departments never actually used the system.

F. Yaki Spoke at Three Fire Commission Meetings Without Identifying Himself as a Paid Lobbyist for Rescue Air Systems.

44. The Fire Commission took up the FARS requirement at three meetings - May 23, June 13, and June 27, 2013. Yaki provided public comment at each of those meetings and encouraged the Fire Commissioners to vote to preserve the FARS requirement, but Yaki failed to indicate that he was speaking on behalf of Rescue Air Systems. These public comments constituted to lobbying contacts, and Yaki failed to report them.

45. Ultimately, the Fire Commission voted on June 27, 2013 to recommend that the Board replace the FARS requirement with the "San Jose option," which allows developers of new high rises that are between 75 and 120 feet tall to install either FARS or a firefighter service elevator.

G. Yaki Lobbied Members of the Board to Reject the Fire Commission's Recommendation.

46. Long before the Fire Commission voted to recommend that the Board adopt the "San Jose option," Yaki lobbied at least eight members of the Board, directly and through their aides, on behalf of Rescue Air Systems.⁴ Yaki attempted to set up meetings with three other supervisors and their aides, but those meetings never took place.

47. Part of Yaki's lobbying strategy when attempting to set up meetings with Board members and their aides was to conceal the fact that he was a paid lobbyist of Rescue Air Systems. For instance, Yaki sent emails to Supervisors Jane Kim and John Avalos on November 12, 2012 asking to set up meetings with them. Yaki claimed that he was "working with constituents concerned about Fire Dep't changes in fire safety that are opposed by the Local 798 and which trend against national code reforms." Supervisor Kim responded the next day and asked Yaki "which constituents you are working with." Yaki wrote, "One of the constituents is me. :-). Others include firemen, and people I've worked to organize on this."

48. Similarly, in October 2012, Yaki wrote to Supervisors David Campos, Eric Mar, and Malia Cohen, claiming to be the "attorney for a firm that advocates for increased safety engineering

⁴ Attached hereto as Exhibits E through O are, respectively, the declarations of Board of Supervisors President David Chiu and his aide Judson True, Supervisor Wiener and his aide Andres Power, Supervisor Mar and his aide Victor Lim, Supervisors Avalos, Campos and Yee, Supervisor Kim's aide Sunny Angullo, and Supervisor Cohen's aide Andrea Bruss.

for firefighters.” In emails to President Chiu and Supervisor Wiener to set up meetings, Yaki never mentioned that he was contacting them as a paid lobbyist for Rescue Air Systems.

49. From October 2012 through at least August 2013, Yaki emailed eight supervisors, directly and through their aides, in an effort to persuade them to reject the Fire Commission’s recommendation and to vote to retain in the Fire Code the mandatory use by high rise developers of Rescue Air Systems’ FARS product. For example, in the November 12, 2012 email to Supervisor Kim in which Yaki claimed to be working for “constituents” and “firemen,” Yaki urged Supervisor Kim to oppose the Fire Department’s proposed amendment:

The proposed change is to effectively – by administrative rule, not statute – nullify a technological advance that will save firefighters’ lives in a catastrophic high-rise fire. As a cost of building, it is less than 1/2 of 1% of a building cost. But the fires of 9/11 and the hazards that high rise smoke poses to First Responders is proven, and this technology allows firefighters and first responders to continue receiving breathable air without having to wait for someone to run up many floors to deliver fresh bottles of air – which, as you can imagine, might be the difference between life and death. This technology will be adopted into the International Fire Code this year, so the idea of nullifying it in San Francisco by administrative act of the Fire Dep’t makes no sense whatsoever. The Fire Marshal seems all over this, which makes no sense whatsoever since it has been in adoption for 8 years.

50. Similarly, on November 30, 2012, Yaki claimed in an email to Supervisor Campos that FARS was “the only system endorsed nationwide by fire service and fire fighter organizations as a technology which will save firefighter lives.” Yaki argued that Fire Marshal Harvey’s opinion that the FARS requirement should be eliminated “makes no sense.”

51. On December 4, 2012, Yaki wrote to Judson True, criticizing Fire Marshal Harvey’s recommendation that reinforced, fire-proofed elevators are a better method of oxygen delivery than FARS. Yaki stated that Fire Marshal Harvey’s view

“is contrary to what the National Institute on Safety Training (NIST) had concluded. Fire elevators are to get people down out of high rises quickly, not to stop and wait and transport stuff up, and, more importantly, NIST has said it is ‘no substitute’ for FARS. Plus, the fact is the ‘Fire Elevator’ is still being tested – no working model exists. Plus, our Code requires elevator shutdown in a Seismic event. If we have a quake and a fire (which go together in this town) the elevators won’t work anyway.”

52. On December 18, 2012, Yaki wrote to Nate Allbee, an aide to Supervisor Campos, “that a ‘fire safety’ elevator is not a substitute for FARS” and that he “would appreciate the

Supervisor's assistance after the New Year and before the 22nd of January." About a month later, Yaki wrote to Allbee, "I'm going to need some help here. We now have contractors refusing to install the Firefighter Air system, even though it's law, b/c the fire marshal is telling people he's going to remove it."

53. In all, Yaki sent approximately 40 emails to Board members and their aides to influence the Board to reject the Fire Commission's recommendation and vote to preserve the FARS requirement. Yaki also had more than 10 in-person meetings with Board members and their aides. At each of those meetings, Yaki argued vigorously in favor of the FARS requirement and attempted to address concerns raised by the Board members.

54. Ultimately, Yaki failed to convince the Board members and their aides to reject the Fire Commission's recommendation. In September 2013, the Board adopted amendments to the City's Fire Code that would require buildings between 75 and 120 feet tall to install either FARS or firefighter service elevators.

CAUSE OF ACTION FOR VIOLATION OF THE LOBBYIST ORDINANCE

55. Plaintiff incorporates by reference the allegations contained in each paragraph above, as if those allegations were fully set forth herein.

56. As of July 31, 2012 or earlier, Yaki was as a lobbyist within the meaning of Section 2.105(g). On information and belief, Rescue Air Systems promised to pay Yaki, or did pay Yaki, more than \$3,000 to perform lobbying services in a consecutive three month period.

57. As a lobbyist for Rescue Air Systems, Yaki made more than 70 lobbying contacts with officers of the City and County of San Francisco, as defined in Section 2.105(k) and Administrative Code Section 1.50. The purpose of these contacts was to influence City officials to vote to preserve the FARS requirement in the City's Fire Code and sometimes to encourage City officials to delay consideration of the FARS requirement.

58. Yaki knowingly or negligently failed to register as a lobbyist with the San Francisco Ethics Commission, as required by Sections 2.110(a) and (b).

59. Yaki knowingly or negligently failed to pay any lobbyist registration fees, as required by Section 2.110(e).

60. Yaki knowingly or negligently failed to file any lobbyist disclosures with the San Francisco Ethics Commission, as required by Section 2.110(c). By failing to file any lobbyist disclosures, Yaki also failed, knowingly or negligently, to report all of the information that must be included in the disclosures, such as all lobbying contacts, all activity expenses he incurred, who was paying him to lobby, how much money he had been paid for lobbying services or how much money he had been promised for lobbying services, and the issues about which he was lobbying.

PRAYER FOR RELIEF

For the reasons set forth above, Plaintiff prays for relief as follows:

1. That, under Campaign and Governmental Conduct Code Section 2.145, the Court assess a civil penalty in an amount up to \$5,000 per violation, or three times the amount Yaki failed to report, whichever is greater;
2. That the Court award Plaintiff the costs of bringing this suit; and
3. That the Court grant any and all other relief to which Plaintiff may be justly entitled.

Dated: December 4, 2013

DENNIS J. HERRERA
City Attorney

By: 

JOSHUA S. WHITE

Attorney for Plaintiff
DENNIS J. HERRERA, in his Official Capacity as San Francisco City Attorney

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made by and between Plaintiff Dennis J. Herrera in his official capacity as San Francisco City Attorney ("Plaintiff") and Defendant Michael Yaki ("Defendant"). Plaintiff and Defendant are referred to collectively herein as the "Parties."

DEFINITIONS

1. The "Action" refers to Dennis J. Herrera, in his Official Capacity as San Francisco City Attorney v. Michael Yaki, Case No. CGC-13-535880, filed in the Superior Court of the State of California, City and County of San Francisco, on or about December 4, 2013.

2. "Court" means the Superior Court of the State of California, City and County of San Francisco.

3. The "Complaint" refers to the complaint filed by Plaintiff in Dennis J. Herrera, in his Official Capacity as San Francisco City Attorney v. Michael Yaki, Case No. CGC-13-535880, filed in the Superior Court of the State of California, City and County of San Francisco, on or about December 4, 2013.

RECITALS

A. Defendant is an attorney and political consultant who has worked in the field of government relations within the City and County of San Francisco.

B. The Action alleges that Defendant violated various provisions of the San Francisco Campaign and Governmental Conduct Code, Article II, Chapter I ("Regulation of Lobbyists").

C. Defendant denies any liability for all allegations described in the Action.

D. The Parties wish to end and resolve any and all pending or potential disputes, known or unknown, related to the Action.

E. In consideration of the promises, covenants, warranties, representations and agreements set forth herein, and each of them, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT

F. EFFECTIVE DATE

This Agreement shall become effective on the last date of the fulfillment of all Conditions Precedent described in Paragraph I.

G. NON-ADMISSION OF LIABILITY

The Parties acknowledge and agree in good faith that this Agreement is the result of a compromise. This Settlement Agreement is not an admission of liability. Defendant denies any liability for all allegations described in the Action.

H. CONSIDERATION

1. Nature of Consideration. The consideration for this agreement is a function of the remedies available under Campaign and Governmental Conduct Code section 2.145(c), the late fees available under Campaign and Governmental Conduct Code section 2.145(a), the lobbyist registration fees required by Campaign and Governmental Conduct Code section 2.110(e)(1), and the financial condition of Defendant and his wife.

2. Economic Consideration. Defendant agrees to pay Plaintiff an amount of \$75,000. Payment shall be made according to the following timeline:

(a) \$74,000, paid in installments of \$8,222.22, on or before each of the following dates: February 28, 2015; February 28, 2016; February 28, 2017; February 28, 2018; February 28, 2019; February 28, 2020; February 28, 2021; February 28, 2022; and February 28, 2023.

(b) On or before February 28, 2015, Defendant shall deliver a check for \$1,000 to the San Francisco Ethics Commission. This sum is equivalent to the cost of retroactive registration as a lobbyist for the years of 2012 and 2013, as referenced in section H.5.(a) of this Agreement.

(c) Of the economic consideration set forth in sections H.2.(a), \$6,000 of it is attributable as an equivalent to late fees for Defendant's alleged failure to register as a lobbyist.

3. Real Estate Lien. The installment payments described in Paragraph H.2.(a) shall be documented in a promissory note secured by a lien on the real estate located at [REDACTED]. The settlement is contingent on Plaintiff obtaining the real estate lien. The lien shall be recorded in [REDACTED].

(a) If any installment payment is not paid by the specified date, the entire remaining amount shall accelerate and become due immediately, plus 10% annual interest that would begin to accrue as of the date of this agreement.

(b) Upon request by Defendant, Plaintiff shall record a satisfaction of the lien within 30 days from the date the Defendant has completed all payments due under this Settlement Agreement.

(c) The address, city, state, county, and zip code of the real estate referenced in paragraph H.3. above shall be redacted from any public copies of this Settlement Agreement. This redaction shall include the county of the listed Assessor's Office.

4. Prepayment Option. Defendant may, at any time, prepay any portion of the economic consideration described in Paragraphs H.2.(a) and H.2.(b).

5. Other Consideration.

(a) Defendant shall, without admitting liability, within ninety days of the date he signs this Agreement, register as a lobbyist with the Ethics Commission for the years of 2012 and 2013 in a manner that complies with Campaign and Governmental Conduct Code sections 2.110(a) and (b). As described in Paragraph H.2.(b), the registration fees shall not be due until February 28, 2015.

(b) Defendant shall, without admitting liability, within ninety days of the date he signs this Agreement, file monthly lobbyist disclosures that comply with the requirements set forth in Campaign and Governmental Conduct Code section 2.110(e) for each month from July 2012 up to and including August 2013 and for any subsequent month in which he engaged in any lobbying. The Defendant shall, in good faith, include in these disclosures, at a minimum, each of the contacts with City officials specifically identified in the Complaint and all exhibits thereto.

(c) Defendant shall, without admitting liability, complete a lobbyist training session offered by the Ethics Commission within one year from the date of registration described in Paragraph H.5.(a) above.

6. Stipulated Judgment. Within ten business days of the Effective Date of this Agreement, the Parties shall file a stipulation for entry of judgment and proposed judgment in this Action.

7. Future compliance. Defendant agrees to comply with the Campaign and Governmental Conduct Code at all times in the future when he is engaging in activities regulated by that Code.

8. Releases.

(a) General Release. Plaintiff releases Defendant as well as Michael Yaki Consulting from any and all claims, causes of action, liabilities, and damages, that Plaintiff now has or may in the future have against Defendant arising from or related to any act, event, or occurrence related to the Action (but excluding each Defendant's obligations under this Agreement, which are not released), and this General Release includes without limitation any claim that has been or could have been asserted in the Action.

(b) Release of Unknown Claims. The Parties understand that the facts in respect of which release is made in this Agreement may hereafter turn out to be other than, or different from, the facts now known or believed by them to be true, and hereby accept and assume the risk of the facts turning out to be different, and agree that this instrument shall be and remain in all respects effective and not subject to termination or rescission by virtue of any such difference in facts. The Parties acknowledge that they have been advised by legal counsel and are familiar with the provisions of California Civil Code section 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

The Parties, being aware of said code section, expressly agree to waive any right they may have thereunder, as well as under any other statute or common law principle of similar effect.

I. CONDITIONS PRECEDENT

The Parties each understand and agree that this Agreement and all terms herein are contingent upon approval of the Agreement by the San Francisco Board of Supervisors and the San Francisco Ethics Commission, each in their own discretion.

J. BINDING EFFECT; MODIFICATION; ATTORNEYS' FEES

This Agreement is an integrated, binding, and enforceable agreement, represents the entire agreement between the Parties, and supersedes any prior oral or written agreement between the Parties, to the extent any exist. In entering into this Agreement, the Parties represent and warrant that they have not relied on any oral or written statements of the other Party not expressly enumerated in writing in this Agreement. This Agreement may be modified only in a writing signed by the Parties. In the event of litigation to enforce the terms of this Agreement or to recover damages for breach of this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and costs of suit.

K. VENUE, ENFORCEMENT, AND CHOICE OF LAW

This Agreement is being executed in the State of California, and it shall be deemed to be made under, and shall be interpreted in accordance with, the internal laws of the State of California. The Parties agree that, in the event of any dispute concerning this Agreement, suit may be brought only in the Superior Court of California for the County of San Francisco. To the extent possible, the Parties agree that the Superior Court for the County of San Francisco shall have continuing jurisdiction to enforce this Agreement pursuant to California Code of Civil Procedure § 664.6. The Parties agree, as part of the motion for a stipulated judgment, to request that the Court retain jurisdiction to enforce this Agreement pursuant to Code of Procedure § 664.6.

L. LEGAL REPRESENTATION

The Parties acknowledge that they each have had the benefit and advice of independent legal counsel in connection with the Agreement and understand its terms and consequences. The Parties further acknowledge that they have carefully read the foregoing Agreement and the contents thereof, and are duly authorized to execute it. For purposes of interpretation, the Agreement shall be deemed to be jointly drafted by the Parties hereto.

M. SEVERABILITY

If any provision of this Agreement or the application thereof to any Party or circumstance is held invalid or unenforceable, the remaining provisions of the Agreement and the application of such provisions to other parties or circumstances shall not be affected thereby, and to the extent possible shall remain in full force and effect, the provisions of this Settlement Agreement being severable in any such instance.

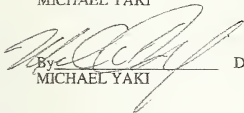
(Remainder of page intentionally left blank)

N. COUNTERPARTS

This Agreement may be executed in counterparts, each of which is, and when so executed and delivered shall be, an original, such counterparts together constituting one and the same instrument. Facsimile signatures or signatures contained in electronic copies of this Agreement may be used with the same force and effect as original signatures.

MICHAEL YAKI

DENNIS J. HERRERA

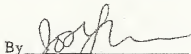
By 
MICHAEL YAKI

Date: 2/12/14

By 
DENNIS J. HERRERA
San Francisco City Attorney

Date: 2/12/14

APPROVED AS TO FORM

By 
JOSHUA S. WHITE
Deputy City Attorney

Date: 2/12/14

Attorney for Plaintiff Dennis J. Herrera in his
capacity as San Francisco City Attorney

ADDENDUM

Based on the consideration set forth in Paragraph H of this Settlement Agreement, the San Francisco Ethics Commission agrees to release Defendant and Michael Yaki Consulting, from any and all claims, causes of action, liabilities, and damages arising from or related to any act, event, or occurrence related to the Action (but excluding Defendant's obligations under this Agreement, which are not released), and includes without limitation any claim that has been or could have been asserted based on any act, event, or occurrence related to the Action.

JOHN ST. CROIX

By _____ Date: _____
JOHN ST. CROIX
Executive Director, San Francisco Ethics
Commission

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made by and between Dennis J. Herrera in his official capacity as San Francisco City Attorney and Ruben Grijalva. Herrera and Grijalva are referred to collectively herein as the "Parties."

DEFINITION

A. The "Action" refers to Dennis J. Herrera, in his Official Capacity as San Francisco City Attorney v. Michael Yaki, Case No. CGC-13-535880, filed in the Superior Court of the State of California, City and County of San Francisco, on or about December 4, 2013.

RECITALS

B. Grijalva was employed by Rescue Air Systems. Some of Grijalva's work on behalf of Rescue Air Systems is described in the Complaint filed in the Action.

C. During the pendency of the Action, Grijalva agreed to serve as a witness to some of Yaki's conduct described in the Action.

D. The Parties wish to end and resolve any and all pending or potential disputes, known or unknown, related to the Action.

E. In consideration of the promises, covenants, warranties, representations and agreements set forth herein, and each of them, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT

F. EFFECTIVE DATE

This Agreement shall become effective on the date that the San Francisco Ethics Commission approves this Agreement.

G. CONSIDERATION

1. Within ten days of the Effective Date of this Agreement, Grijalva shall deliver a check for \$500 to the San Francisco Ethics Commission. This sum is for retroactive registration as a lobbyist for the year of 2013.

2. Grijalva shall, within ten days of the Effective Date of this Agreement, register as a lobbyist with the Ethics Commission for the year of 2013 in a manner that complies with Campaign and Governmental Conduct Code sections 2.110(a) and (b).

3. Grijalva shall, within ten days of the Effective Date of this Agreement, file monthly lobbyist disclosures that comply with the requirements set forth in Campaign and Governmental Conduct Code section 2.110(e) for April 2013, May 2013, and June 2013, and for any subsequent month in which he engaged in any lobbying.

4. Grijalva shall complete a lobbyist training session offered by the Ethics Commission within one year of the Effective Date of this Agreement.

5. Future compliance. Grijalva agrees to comply with the Campaign and Governmental Conduct Code at all times in the future when he is engaging in activities regulated by that Code.

H. RELEASE

Herrera releases Grijalva from any and all claims, causes of action, liabilities, and damages, that Herrera now has or may in the future have against Grijalva arising from or related to any act, event, or occurrence related to the Action (but excluding Grijalva's obligations under this Agreement, which are not released), and this Release includes without limitation any claim that has been or could have been asserted in the Action.

I. CONDITIONS PRECEDENT

The Parties each understand and agree that this Agreement and all terms herein are contingent upon approval of the Agreement by the San Francisco Ethics Commission.

J. BINDING EFFECT; MODIFICATION; ATTORNEYS' FEES

This Agreement is an integrated, binding, and enforceable agreement, represents the entire agreement between the Parties, and supersedes any prior oral or written agreement between the Parties, to the extent any exist. In entering into this Agreement, the Parties represent and warrant that they have not relied on any oral or written statements of the other Party not expressly enumerated in writing in this Agreement. This Agreement may be modified only in a writing signed by the Parties. In the event of litigation to enforce the terms of this Agreement or to recover damages for breach of this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and costs of suit.

K. VENUE, ENFORCEMENT, AND CHOICE OF LAW

This Agreement is being executed in the State of California, and it shall be deemed to be made under, and shall be interpreted in accordance with, the internal laws of the State of California. The Parties agree that, in the event of any dispute concerning this Agreement, suit may be brought only in the Superior Court of California for the County of San Francisco. To the extent possible, the Parties agree that the Superior Court for the County of San Francisco shall have continuing jurisdiction to enforce this Agreement pursuant to California Code of Civil Procedure § 664.6. The Parties agree, as part of the motion for a stipulated judgment, to request that the Court retain jurisdiction to enforce this Agreement pursuant to Code of Procedure § 664.6.

L. SEVERABILITY

If any provision of this Agreement or the application thereof to any Party or circumstance is held invalid or unenforceable, the remaining provisions of the Agreement and the application of such provisions to other parties or circumstances shall not be affected thereby, and to the extent possible shall remain in full force and effect, the provisions of this Settlement Agreement being severable in any such instance.

M. COUNTERPARTS

This Agreement may be executed in counterparts, each of which is, and when so executed and delivered shall be, an original, such counterparts together constituting one and the same instrument. Facsimile signatures or signatures contained in electronic copies of this Agreement may be used with the same force and effect as original signatures.

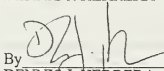
RUBEN GRIJALVA



Date: 2/19/2014

RUBEN GRIJALVA

DENNIS J. HERRERA



By
DENNIS J. HERRERA
San Francisco City Attorney

Date:

2/19/14

APPROVED AS TO FORM



By
JOSHUA S. WHITE
Deputy City Attorney

Date:

2/19/14

Attorney for Plaintiff Dennis J. Herrera in his
capacity as San Francisco City Attorney

ADDENDUM

Based on the consideration set forth in this Settlement Agreement, the San Francisco Ethics Commission agrees to release Ruben Grijalva, from any and all claims, causes of action, liabilities, and damages arising from or related to any act, event, or occurrence related to the Action (but excluding Grijalva's obligations under this Agreement, which are not released), and includes without limitation any claim that has been or could have been asserted based on any act, event, or occurrence related to the Action.

JOHN ST. CROIX

By _____ Date: _____
JOHN ST. CROIX
Executive Director, San Francisco Ethics
Commission

RUBEN GRIJALVA



RUBEN GRIJALVA

Date: 2/19/2014

DENNIS J. HERRERA

By _____
DENNIS J. HERRERA
San Francisco City Attorney

Date: _____

APPROVED AS TO FORM

By _____
JOSHUA S. WHITE
Deputy City Attorney


Date: _____

Attorney for Plaintiff Dennis J. Herrera in his
capacity as San Francisco City Attorney

ADDENDUM

Based on the consideration set forth in this Settlement Agreement, the San Francisco Ethics Commission agrees to release Ruben Grijalva, from any and all claims, causes of action, liabilities, and damages arising from or related to any act, event, or occurrence related to the Action (but excluding Grijalva's obligations under this Agreement, which are not released), and includes without limitation any claim that has been or could have been asserted based on any act, event, or occurrence related to the Action.

JOHN ST. CROIX

By  _____
JOHN ST. CROIX
Executive Director, San Francisco Ethics
Commission

Date: 2/19/14



ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

EXECUTIVE DIRECTOR'S REPORT TO THE SAN FRANCISCO ETHICS COMMISSION For the Regular Meeting of February 24, 2014

BEVERLY HAYON
CHAIRPERSON

PAUL A. RENNE
VICE-CHAIRPERSON

BRETT ANDREWS
COMMISSIONER

BENEDICT Y. HUR
COMMISSIONER

PETER KEANE
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

1. Budget/Staffing.

At the January meeting, the Commission adopted a budget proposal for the Fiscal Year 2014/2015. As previously reported, the extended vacancy in the Audit staff has been filled; however, another auditor has resigned due to an opportunity in another department. We will endeavor to fill this new vacancy as soon as practical.

2. Investigation and enforcement program.

As of February 18, 2014, there were 20 pending formal complaints alleging violations within the Ethics Commission's jurisdiction.

Category	# of Complaints
Campaign Finance	15
Conflict of Interest	2
Governmental Ethics	0
Lobbyist Ordinance	0
Campaign Consultant Ordinance	2
Sunshine Ordinance	1
TOTAL	20

3. Campaign finance disclosure program.

a. Filing deadline. The most recent filing deadline was on January 31, 2014 for the First Semi Annual statement, which covers the reporting period ending December 31, 2013. Of the 183 committees required to file on this deadline, only two have not yet filed and staff is pursuing those entities (one is an office holder and one is a general purpose committee). The next filing deadline is March 24, 2014 for the First Pre-Election statement, which covers the reporting period ending March 17, 2014.

Due to recent changes to the Campaign Finance Reform Ordinance and Ethics Commission regulations, all committees must now file electronic statements and complete the electronic signature requirements. Staff has informed treasurers and candidates about the new requirements and has provided detailed instructions. Staff continues to inform and assist committees during this transition.

b. Collection of late filing fees and contribution forfeitures. In the FY 13-14, as of January 31, the Commission collected a total of \$4,869 in campaign finance late fees and forfeitures. Outstanding late fees and forfeitures total \$20,459, of which waiver



ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

EXECUTIVE DIRECTOR'S REPORT TO THE SAN FRANCISCO ETHICS COMMISSION For the Regular Meeting of February 24, 2014

BEVERLY HAYON
CHAIRPERSON

PAUL A. RENNE
VICE-CHAIRPERSON

BRETT ANDREWS
COMMISSIONER

BENEDICT Y. HUR
COMMISSIONER

PETER KEANE
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

1. Budget/Staffing.

At the January meeting, the Commission adopted a budget proposal for the Fiscal Year 2014/2015. As previously reported, the extended vacancy in the Audit staff has been filled; however, another auditor has resigned due to an opportunity in another department. We will endeavor to fill this new vacancy as soon as practical.

2. Investigation and enforcement program.

As of February 18, 2014, there were 20 pending formal complaints alleging violations within the Ethics Commission's jurisdiction.

Category	# of Complaints
Campaign Finance	15
Conflict of Interest	2
Governmental Ethics	0
Lobbyist Ordinance	0
Campaign Consultant Ordinance	2
Sunshine Ordinance	1
TOTAL	20

3. Campaign finance disclosure program.

a. Filing deadline. The most recent filing deadline was on January 31, 2014 for the First Semi Annual statement, which covers the reporting period ending December 31, 2013. Of the 183 committees required to file on this deadline, only two have not yet filed and staff is pursuing those entities (one is an office holder and one is a general purpose committee). The next filing deadline is March 24, 2014 for the First Pre-Election statement, which covers the reporting period ending March 17, 2014.

Due to recent changes to the Campaign Finance Reform Ordinance and Ethics Commission regulations, all committees must now file electronic statements and complete the electronic signature requirements. Staff has informed treasurers and candidates about the new requirements and has provided detailed instructions. Staff continues to inform and assist committees during this transition.

b. Collection of late filing fees and contribution forfeitures. In the FY 13-14, as of January 31, the Commission collected a total of \$4,869 in campaign finance late fees and forfeitures. Outstanding late fees and forfeitures total \$20,459, of which waiver

requests are pending for \$210, and \$13,260 is pending at the Bureau of Delinquent Revenues (BDR).

c. Status of accounts to San Francisco Bureau of Delinquent Revenues (BDR). The following chart provides details on active accounts referred to BDR as of January 31, 2014:

#	Committee/ Filer	ID #	Treasurer or Responsible Officer	Date referral effective	Original amount referred	Last month's balance	Current balance (Changes are in bold)
1	Johnny K. Wang JKW Political Consulting	100716	Johnny K. Wang	4/19/11	\$4,000	\$4,000	\$4,000
2	Coalition to Elect Chris Jackson to Community College Board	1302351	Chris Jackson	6/17/11	\$2,658.90	\$2,658.90	2,658.90
3	Chris Jackson For Community College Board	1347066	Chris Jackson	7/12/13	\$6,600.94	\$6,600.94	\$6,600.94
						TOTAL	\$13,260

4. Revenues report.

For FY 13-14, the Commission is budgeted to generate \$100,000 in revenues. As of February 14, 2014, the Commission received \$65,096 as summarized below. The figure represents collection of approximately .65 percent of expected revenues for FY 13-14, .625 percent of the fiscal year having elapsed.

Revenues received as of February 14, 2014:

Source	Budgeted Amount FY 13-14	Receipts
Lobbyist Fees	\$27,000	\$53,500
Other Ethics General	\$1,000	\$4
Campaign Finance Fines	\$50,000	\$4,869
Campaign Consultant Fees	\$18,000	\$3,800
Lobbyist Fines	\$1,000	\$200
Statements of Economic Interests Fines	\$1,000	\$1,510
Other Ethics Fines	\$1,000	\$4,663
Campaign Consultant Fines	\$1,000	\$50
Unallocated	\$0	\$0
Total	\$100,000	\$65,096

5. Lobbyist program.

As of February 18, 2014, 96 individual lobbyists were registered with the Commission. Total revenues collected to date for the 2013-2014 fiscal year amount to \$53,700, with \$53,500 in lobbyist registration fees and \$200 in fines. The deadline for lobbyists to pay the annual re-registration fee was February 1, 2014. The filing deadline for the next lobbyist disclosure statement is March 17, 2014.

6. Campaign Consultant program.

As of February 18, 2014, 17 campaign consultants were registered with the Commission. \$3,850 in registration fees and fines and have been collected so far during the 2013-2014 fiscal year. In addition, a \$200 refund was paid to a consultant who had overpaid fees in fiscal year 2012-2013. The next campaign consultant quarterly report deadline is Monday, March 17, 2014. Staff will send reminders to all active campaign consultants before the deadline.

7. Statements of Economic Interests.

On February 5, 2014, staff held the first of two trainings for department heads, filing officers, and e-filers on how to use the Commission's online filing system (NetFile) and filing officer duties. A second training is scheduled for March 5, 2014.

On February 12, 2014, e-filers were sent an announcement that NetFile was available for filing their assuming, annual and leaving office Form 700s, and instructions on how to use the system. As of February 18, 2014, 57 Form 700s have been filed.

On February 25, the Ethics Commission will be providing four staff members to assist with the collection of Sunshine Ordinance Declarations and Certificates of Ethics Training at the City Attorney's AB 1234 training course.

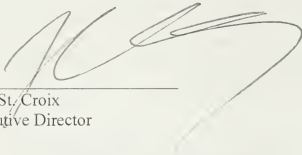
8. Outreach and Education.

The Commission continues to offer trainings on Statements of Incompatible Activities to City departments via web trainings. The following are web video trainings available on the Commission website:

- Department of Building Inspection SIA Training
- Candidates' Training
- Controller's Office SIA Training
- Department on the Environment SIA Training
- Governmental Ethics Ordinance Training for City Employees

Lobbyist Ordinance Training
Medical Examiner's Office SIA Training
Non-Candidate Recipient Committee Training
Public Utilities Commission SIA Training
SIA Template Language Training

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'John St. Croix', is written over a horizontal line.

John St. Croix
Executive Director

SAED Report2013\2.24.2014.doc

Minutes of the Regular Meeting of
The San Francisco Ethics Commission
February 24, 2014
Room 400, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

GOVERNMENT
DOCUMENTS DEPT

MAR 21 2014

SAN FRANCISCO
PUBLIC LIBRARY

I. Call to order and roll call.

Chairperson Hayon called the meeting to order at 5:30 PM.

COMMISSION MEMBERS PRESENT: Beverly Hayon, Chairperson; Paul Renne, Vice-Chairperson; Brett Andrews, Commissioner; Benedict Y. Hur, Commissioner; Peter Keane, Commissioner.

STAFF PRESENT: John St. Croix, Executive Director; Garrett Chatfield, Investigator/Legal Analyst.

OFFICE OF THE CITY ATTORNEY: Josh White, Deputy City Attorney (DCA).

OTHERS PRESENT: Ray Hartz and one unidentified member of the public.

MATERIALS DISTRIBUTED:

- Compliant filed in *Herrera v. Yaki*, Case No. CGC-13-535880, filed on Dec. 4, 2013; proposed settlement agreement re *Herrera v. Yaki*; proposed settlement agreement re Ruben Grijalva;
- Draft minutes of the Commission's Regular Meeting of January 27, 2014;
- Executive Director's Report.

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

Ray Hartz stated that he won 16 out of 21 Sunshine Ordinance Task Force complaints that he brought before that body. He stated that the Ethics Commission is not interested in protecting the public and is only interested in protecting City wrongdoers. He stated that Luis Herrera perjured himself and withheld public records and that he abused his position.

The following written summary was provided by the speaker, Ray Hartz, the content of which is neither generated by, nor subject to approval or verification of accuracy by, the Ethics Commission:

On the screen is a list of 16 Orders of Determination issued by the SOTF in cases I have filed. That 16 out of 21, a 76% success rate! Now I'll ask the commissioners to take a guess how many of these have been enforced? The answer is zero! What I think is particularly interesting is the fact of all the cases sent to this Ethics Commission, you've dismissed every one. The members of this body have absolutely no interest in helping the citizens of San Francisco, but only in protecting the City against its citizens! Another interesting fact is that many of these cases involve violations of the law by the people who appoint you. So, what do San Franciscans get for the millions of dollars it cost to support this body each year? What we get is an infrastructure designed only to cover the backsides of City wrongdoers.

III. Election of Officers. The Commission will elect a Chair and Vice-chair to serve for the coming year.

Executive Director St. Croix introduced the item and stated that no second to a motion for Chairperson or Vice-Chairperson is required, and that a Commissioner may nominate himself or herself for Chairperson or Vice-Chairperson.

The Commissioners thanked Chairperson Hayon for her service.

Commissioner Keane nominated and moved that Commissioner Hur serve as the new Chairperson for 2014.

Public Comment:

Ray Hartz posted contact information on the overhead projector and requested members of the public who might be watching the Ethics Commission meeting at home to contact him with any comments they may have. He also stated that Luis Herrera perjured himself on his Statement of Economic Interests and the Ethics Commission did nothing.

The following written summary was provided by the speaker, Ray Hartz, the content of which is neither generated by, nor subject to approval or verification of accuracy by, the Ethics Commission:

The election of officers for this body is like "rearranging deck chairs on the Titanic!" It doesn't seem to matter who's in charge, absolutely nothing gets done that actually changes the ethical atmosphere of San Francisco. I've asked before, but one more time: tell me something that the members of this body have done to actually make public participation in government possible? How about something which would prevent City employees from violating the law to cover their own asses? City Librarian Luis Herrera, after withholding public records unlawfully for over two years, was only found guilty of perjury after the case was brought before a state agency. During that process there was not one participant to the complaint who ever considered bringing it to you! You are only here to enforce the law when your Political Masters direct you to do so. Your record clearly establishes this fact!

Motion 14-02-24-01 (Keane) Moved and passed (5-0) that Commissioner Hur serve as Chairperson for 2014.

Commissioner Andrews nominated and moved that Commissioner Keane serve as the Vice-Chairperson for 2014.

Commissioner Keane declined the nomination stating that he would like more experience on the Commission before serving as Vice-Chairperson.

Commissioner Keane nominated and moved that Vice-Chairperson Renne continue to serve as Vice-Chairperson for 2014.

Public Comment:

Ray Hartz stated that the Ethics Commission does nothing to improve ethical behavior in the City. He stated that the Mirkarimi hearing was a fiasco. He stated that the Ethics Commission only deals with campaign finance laws and does nothing to improve open government. He stated that the Library Commission and Police Commission stop members of the public from speaking. He stated that he sounds like an angry old man, but after five years of seeing nothing get done he is offended that City officials do not adhere to their oaths.

Motion 14-02-24-02 (Keane) Moved and passed (5-0) that Vice-Chairperson Renne serve as Vice-Chairperson for 2014.

IV. Discussion and possible action regarding existing litigation.

Commissioner Hur requested to be recused from this item because a partner at his law firm represented Michael Yaki.

Public Comment:

None.

Motion 14-02-24-03 (Hur/Keane) Moved, seconded, and passed (5-0) that Commissioner Hur be recused from Agenda Item IV.

Commissioner Hur left the dais at 5:48 PM.

- a. Public Comment on all matters pertaining to Agenda Item IV, including whether to meet in closed session.**

None.

- b. Discussion and vote to assert attorney-client privilege and convene in closed session with the City Attorney for the purpose of conferring with, or receiving advice from, the City Attorney regarding proposed settlements for existing and potential litigation under Brown Act section 54956.9(a) and 54956.9(c) and Administrative Code section 67.10(d).**

DCA White stated that closed session was necessary for this item because the settlement occurred in the context of pending litigation and that in order to preserve the attorney-client privilege, any discussion regarding the matter had to occur in closed session.

Commissioner Keane stated that even though the litigation was filed by the City Attorney's Office, the Ethics Commission is discussing the matter as the City Attorney's client and closed session is necessary to ensure the attorney-client privilege is not waived.

Public Comment:

Ray Hartz stated that Commissioner Hur should also leave the hearing room during closed session because he was recused from the agenda item.

Chairperson Hayon stated that by recusing himself from the item, Commissioner Hur understood he was required to leave the room during closed session.

Motion 14-02-24-04 (Renne/Andrews) Moved, seconded, and passed (4-0, Hur recused) that the Ethics Commission go into closed session.

The Ethics Commission went into closed session at 5:54 PM. Commissioner Hur, Ray Hartz, and the one unidentified member of the public left the hearing room. Chairperson Hayon, Vice-Chairperson Renne, Commissioners Andrews and Keane, Executive Director St. Croix, Ethics Commission staff member Garrett Chatfield, and DCA Josh White remained in the hearing room during closed session.

- c. Discussion and possible action on proposed settlements in the following matters:**

i. Dennis J. Herrera, in his Official Capacity as San Francisco City Attorney v. Michael Yaki, Case No. CGC-13-535880, filed in the Superior Court of the State of California, City and County of San Francisco, on December 4, 2013.

ii. Potential litigation against Ruben Grijalva for alleged violations of the City's Lobbyist Ordinance.

The Ethics Commission returned to open session at 7:20 PM.

Motion 14-02-04-05 (Renne/Hur) Moved, seconded and passed (4-0, Hur recused) that the Ethics Commission disclose that it adopted both settlement agreements in closed session and that it keep confidential the discussion that occurred during closed session.

Commissioner Hur rejoined the Commission on the dais at 7:21 PM. Commissioner Hur stated that his law-firm walled him off from this litigation.

V. Discussion and possible action on the minutes of the Commission's meeting of January 27, 2014.

Commissioner Keane directed staff to amend a section of the minutes that incorrectly characterized a member of the public's comments regarding Juliet Ellis. Executive Director St. Croix stated staff would make the necessary change.

Public Comment:

Ray Hartz stated that he wanted to acknowledge Dr. Kerr who continues to work to raise the ethical level of City government. He stated that the Ethics Commission does not protect City employees and that it was incompetent in its handling of Dr. Kerr's complaint. He stated that Ethics Commission as a group is a collective disaster.

The following written summary was provided by the speaker, Ray Hartz, the content of which is neither generated by, nor subject to approval or verification of accuracy by, the Ethics Commission:

In these minutes I would like to comment only on item II. First I want to acknowledge Dr. Derek Kerr for all that he did, and continues to do, to raise the ethical level of City government. What Dr. Kerr endured sends a loud and clear message to the employees of the City: don't report wrongdoing! Follow the example of this Ethics Commission and "just look the other way!" The Ethics Commission handling of the matter was at best incompetent. My personal opinion it was nothing less than collusion with other City entities to cover up wrongdoing! The final outcome: not one City employee was held accountable. The only losers were the citizens of San Francisco who ended up paying \$750,000 and God only knows how much in legal fees to bring this matter to a conclusion. My question to you: what the hell are we paying you to do?

Motion 14-02-04-06 (Andrews/Renne) Moved, seconded and passed (5-0) that the Ethics Commission approve the minutes as amended.

VI. Discussion of Executive Director's Report.

Executive Director St. Croix introduced the item and noted two typographical errors. He also stated that two matters referred to the Bureau of Delinquent Revenue have been litigated and one is set for litigation. The Executive Director also stated that the Ethics Commission only has the legal authority to impose

finances for late filing or non-filing of Statement of Economic Interests (SEI), and that the California Fair Political Practices Commission is the agency with the jurisdiction to enforce false or incorrect information that is disclosed on an SEI in violation of state law.

Ethics Commission staff member Garrett Chatfield responded to Commissioner Andrews stating that the increase in revenue regarding lobbyist fees is due to the annual registration fees collected in January of each year.

DCA White stated that revisions to the Lobbyist Ordinance are scheduled to be discussed by the Board of Supervisors in March 2014.

Public Comment:

Ray Hartz stated that he just heard the Executive Director state that if a City Official perjures himself or herself on an SEI, the Ethics Commission does nothing. He asked if that was what the Ethics Commission advises to City employees. He stated that Luis Herrera perjured himself on his SEI and that the Ethics Commission training is ineffective and its enforcement is non-existent.

The following written summary was provided by the speaker, Ray Hartz, the content of which is neither generated by, nor subject to approval or verification of accuracy by, the Ethics Commission:

There are two items I would like to discuss. The first is item number 2, where we see that everyone has finally learned sending Sunshine Ordinance referrals to you is a pointless exercise! The second is item number 7, where I would like to ask a question: exactly what do you train City employees about their responsibilities? I previously showed Luis Herrera's false filings for 2009, let's look at 2010 and 2011. As you can see, Herrera filed statements under penalty of perjury where he claimed he received nothing of value. His revised forms show that each year he had received thousands of dollars from "The Friends" and then proceeded to lie and say he received nothing! The library commission would have you believe these were "bookkeeping errors" as opposed to blatant, knowing, and willful violations of the law! Bottom line: your training is obviously ineffective and your enforcement nonexistent!

VII. Items for future meetings.

Commissioner Keane requested a future item for the March 2014 Ethics Commission meeting to discuss sending a letter to the San Francisco Public Utilities Commission recommending Juliet Ellis be terminated for her violations of the Conflict of Interest Code.

Public Comment:

Ray Hartz stated that the Ethics Commission should solicit public input regarding what the public thinks the Ethics Commission should be doing. He stated that the Ethics Commission only conducts business based on a hidden agenda dictated by each Commissioner's appointing authority. He stated that the Ethics Commission sends a message that it will not protect whistleblowers.

The following written summary was provided by the speaker, Ray Hartz, the content of which is neither generated by, nor subject to approval or verification of accuracy by, the Ethics Commission:

You know what I'd like to see in future agendas for this Ethics Commission? I would like to see you actively solicit input from the citizens of San Francisco about what they would like you to be doing! What they would like to see from you that would actually give them some hope that you

intend to raise the ethical standards in San Francisco government. From my experience anything and everything you do is based on some "hidden agenda" given to you by your political masters! Each and every one of you answer to your appointing authority rather than to the citizens of the City. As far as I can tell, your existence is worse than meaningless. Your existence causes far more harm than any good it does. This body does everything within its power to stand in the way of those who try to clean up the City!

VIII. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

None.

IX. Adjournment.

Motion 14-02-24-07 (Keane/Renne) Moved, seconded and passed (5-0) that the Ethics Commission adjourn.

The meeting adjourned at 7:43 PM.



**SAN FRANCISCO ETHICS COMMISSION
NOTICE OF REGULAR MEETING**

March 24, 2014, 5:30 P.M.

**and AGENDA
Room 400 City Hall**

1 Dr. Carlton B. Goodlett Place, San Francisco

GOVERNMENT
DOCUMENTS DEPT

MAR 21 2014

SAN FRANCISCO
PUBLIC LIBRARY

- I. Call to order and roll call.
- II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.
- III. Discussion and possible action on matters submitted under Chapter Two of the Ethics Commission's Regulations for Violations of the Sunshine Ordinance. Under Chapter Two of the Regulations, the Respondent bears the burden of showing that he or she did not commit a violation of the Sunshine Ordinance. In each of the following show cause hearings, the votes of at least three Commissioners are required to make a finding that a Respondent has met his or her burden and has not committed a violation of the Sunshine Ordinance. Respondents and Complainants may speak on their own behalf, subject to the following time limits: each Respondent shall be permitted a five-minute statement; Complainant shall be permitted a five-minute statement; and each Respondent shall be permitted a three-minute rebuttal. (Attachments: for the matter listed, copies of all documents received from the Sunshine Ordinance Task Force, notice letters from the Commission staff to the Respondent and Complainant, and any documents submitted to the Commission by the Respondent and/or Complainant; a copy of the Ethics Commission Regulations for Handling Violations of the Sunshine Ordinance and a copy of the Sunshine Ordinance, Chapter 67 of San Francisco Administrative Code.)
 - a) Ethics Complaint No. 04-140303 (referred from the Sunshine Ordinance Task Force on March 3, 2014)
Complainant: Ray Hartz
Respondent: Luis Herrera, City Librarian
- IV. Discussion and possible action on the selection of random audits of 2013 committees. Staff estimates that it will have time and resources to conduct five random audits of non-publicly financed candidate, ballot measure and general purpose committees that were active in the 2013 election. The Commission may choose these five committees on a random basis at this meeting. (Attachment: March 18, 2014 staff report.)

- V. Discussion and possible action where the Commission will conduct a discussion regarding its ability to take further action on settlement agreements approved under the Commission's enforcement process and will specifically consider a resolution proposed by Commissioner Keane to take further action on the recent settlement agreement with Juliet Ellis of the Public Utilities Commission. (Attachment: proposed resolution.)
- VI. Discussion and possible action on the minutes of the Commission's meeting of February 24, 2014. (Attachment: February 24, 2014 draft minutes.)
- VII. Discussion of Executive Director's Report. An update of important Ethics Commission staff activities since the previous monthly meeting. The written report, which is available at the Commission office and on its website, covers the investigation and enforcement program, revenues, campaign finance disclosure program, revenues, public financing/campaign finance audit program, lobbyist program, campaign consultant program, and outreach and education. Any of these subjects may potentially be part of the Director's presentation or discussed by the Commission. (Attachment: Executive Director's Report.)
- VIII. Items for future meetings. Commissioners may propose items for future agendas and the Commission may determine the priority of these items. (Discussion.)
- IX. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.
- X. Adjournment.

There will be an opportunity for public comment on each agenda item.

Materials contained in the Commission packets for meetings are available for inspection and copying during regular office hours at the Ethics Commission, 25 Van Ness Avenue, Suite 220, at least 72 hours prior to meetings. Any materials distributed to members of the Ethics Commission within 72 hours of the meeting or after the agenda packet has been delivered to the members are available for public inspection at the Ethics Commission, 25 Van Ness Avenue, Suite 220, San Francisco, during normal office hours.

Cell phones, pagers and similar sound-producing electronic devices: The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. The Chair may order the removal from the meeting room of any person responsible for the ringing or use of a cell phone, pager, or other similar sound-producing electronic devices.

Disability Access: The Ethics Commission meeting will be held in Room 400, City Hall, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA. The Commission meeting room is wheelchair accessible. The closest accessible BART station is the Civic Center Station at United Nations Plaza and Market Street. Accessible MUNI lines serving this location are: #42 Downtown Loop, and #71 Haight/Noriega and the F Line to Market and Van Ness and the Metro Stations at Van Ness and Market and at Civic Center. For information about MUNI accessible services call (415) 923-6142. There is accessible curbside parking adjacent to City Hall on Grove Street and Van Ness Avenue and in the vicinity of the Veterans Building at 401 Van Ness Avenue adjacent to Davies Hall and the War Memorial Complex.

To obtain a disability-related modification or accommodation, including auxiliary aids or services, to participate in a meeting, please contact the Ethics Commission at least 48 hours before the meeting, except for Monday meetings, for which the deadline is 4:00 p.m. the previous Friday. Late requests will be honored, if possible. Services available on request include the following: American sign language interpreters or the use of a reader during a meeting, a sound enhancement system, and/or alternative formats of the agenda and

minutes. Please contact the Ethics Commission (415) 252-3100 to make arrangements for a disability-related modification or accommodation.

Chemical-Based Products: In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical-based products. Please help the City accommodate these individuals.

KNOW YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE (Chapter 67 of the San Francisco Administrative Code): Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils, and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

FOR MORE INFORMATION ON YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE OR TO REPORT A VIOLATION OF THE SUNSHINE ORDINANCE, CONTACT THE SUNSHINE ORDINANCE TASK FORCE, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102-4689; phone: (415) 554-7724; fax: (415) 554-7854; email: SOTF@SFGOV.ORG. Copies of the Sunshine Ordinance can be obtained from the Clerk of the Sunshine Task Force, at the San Francisco Public Library, and on the City's website at <http://www.sfgov.org>

Lobbyist Registration and Reporting Requirements: Individuals who influence or attempt to influence local policy or administrative action may be required by the San Francisco Lobbyist Ordinance (San Francisco Campaign and Governmental Conduct Code sections 2.100 – 2.160) to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 25 Van Ness Avenue, Suite 220, San Francisco, CA 94102; telephone (415) 252-3100, fax (415) 252-3112; and website: www.sfgov.org/ethics.

S:\AGENDA\2014\3.24.2014.doc



ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

BENEDICT Y. HUR
CHAIRPERSON

Date: March 20, 2014

PAUL A. RENNE
VICE-CHAIRPERSON

To: Members, Ethics Commission

BRETT ANDREWS
COMMISSIONER

From: John St. Croix, Executive Director

BEVERLY HAYON
COMMISSIONER

Re: Show Cause Hearing – Ethics Complaint 04-140303

PETER KEANE
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

On March 3, 2014, the Sunshine Ordinance Task Force ("Task Force") delivered a referral letter and an Order of Determination ("Order") to the Ethics Commission. The referral was made pursuant to section 67.30(c) of the Sunshine Ordinance and named Luis Herrera, City Librarian, as the Respondent.

According to the Order, the Task Force held a hearing on the matter (Sunshine complaint number 13013) on July 9, 2013. The complainant, Ray Hartz, alleged that "the Respondent violated the Sunshine Ordinance by failing to provide equal access to members of the public to Library audiovisual equipment for use during public comment at Library Commission meetings, thereby abridging their speech." According to the Order, the Task Force found that the Library Commission violated sections 67.15(a) and 67.15(b) of Sunshine Ordinance for abridging public comment by not providing equal access to audio visual equipment by invited parties and the public.

The written Order was issued on August 19, 2013 and ordered the agency to provide equal access to its audio visual equipment and to appear before the Compliance and Amendments Committee on September 17, 2013. The Compliance and Amendments Committee heard the matter on September 17, 2013 and referred the matter back to the Task Force.

On October 2, 2013, the Task Force heard the matter again. It found Luis Herrera in violation of the Sunshine Ordinance as determined in its Order and referred the matter to the Ethics Commission and the Board of Supervisors.

HEARING PROCEDURES & SCHEDULING:

This matter will be heard under Chapter Two of the Ethics Commission Regulations for Handling Violations of the Sunshine Ordinance ("Regulations"). This matter is scheduled to be heard at a Show Cause Hearing during the next regular Ethics Commission meeting at **5:30 PM on Monday, March 24, 2014**, in Room 400 in City Hall.

According to Chapter Two of the Regulations, the Respondent bears the burden to show that he or she did not violate the Sunshine Ordinance. (See Regulations, Chapter Two, § II.B.) The Commission is required to deliberate on this matter in public and public comment will be allowed at the hearing. (See Regulations, Chapter Two, § II.D.) The votes of at least three Commissioners are required to make a finding that a Respondent has met his or her burden and has not committed a violation of the Sunshine Ordinance. The finding must be supported by findings of fact and conclusions of law and must be based on the entire record of the proceedings. (See Regulations, Chapter Two, § II.D.)

Neither the Respondent nor the Complainant is required to attend the hearing. However, if either party fails to appear, and the Commission did not grant the party a continuance or reschedule the matter under Chapter Four, section I.E, then the Commission may make a decision in the party's absence. Any Respondent or Complainant may request the continuance of a hearing date in writing. The requester must deliver the written request to the Commission Chairperson, and provide a copy of the request to all other parties no later than ten business days before the date of the hearing. Here, neither party has requested a continuance.

The Respondent and the Complainant may speak on his or her own behalf, subject to the following time limits: Respondent shall be permitted a five-minute statement; Complainant shall be permitted a five-minute statement; and Respondent shall be permitted a three-minute rebuttal.

Unless otherwise decided by the Commission, formal rules of evidence do not apply to the hearing. Each Respondent and Complainant may submit any documents to the Commission to support his or her position. Any documents provided must be provided to the opposing party and shall be delivered to the Commission no later than five business days prior to the scheduled hearing. Here, Respondent submitted documents to the Commission; Complainant did not.

Copies of all of the documents received from the Task Force regarding this matter and Respondent's written submission have been attached to this memorandum; a copy of the Regulations is also attached.



San Francisco Public Library

March 14, 2014

Ethics Commission
John St. Croix, Executive Director
City and County of San Francisco
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102

Dear Ethics Commission,

On March 5, 2014, the Ethics Commission scheduled for a Show Cause Hearing a Sunshine Ordinance Task Force ("SOTF") referral letter and Order of Determination for Complaint No. 04-140303. Pursuant to the Ethics Commission Regulation for Handling Violations of the Sunshine Ordinance, Chapter Two, the San Francisco Public Library ("SFPL") Commission has the burden to show that it did not commit a violation of the Sunshine Ordinance. Ray Hartz alleges that the "Respondent violated the Sunshine Ordinance by failing to provide equal access to members of the public to Library audiovisual equipment for use during public comment at the Library Commission meetings, thereby abridging their speech." The SOTF erroneously found that the Library Commission violated Administrative Code sections 67.15(a) and 67.15(b). The SFPL Commission did not violate the Sunshine Ordinance because the Commission's decision not to expend significant resources to make the necessary accommodations to modify the technology that SFPL uses at the SFPL Koret Auditorium was based on pure economics. We ask that the Ethics Commission find that SFPL Commission did not violate Administrative Code sections 67.15(a) and 67.15(b).

Background

In e-mail correspondence from Mr. Ray Hartz dated January 14, 2013, he requested that members of the public be allowed to use audio visual aids to support public comment. The SFPL explored numerous options to accommodate his request including providing the public with a basic transparency device that uses an overhead projector. This option was not feasible as the projector could not project the image on the auditorium screen to allow the public and commission to view. The only viable option available for audio visual presentations at the SFPL Commission meeting which are held at the Koret Auditorium at the Main Library would require reconfiguring the SFPL's information technology set-up to allow the public to download their presentations from a laptop. This option would require additional expenses and resources. It would involve engineering staff and a construction contractor to modify the cable set up, including running cables under the stage podium and into the projection room. SFPL's facilities staff also consulted with the Department of Public Works to ensure proper ADA setup and the preliminary costs for the reconfiguration and modifications ranged up to \$40,000. The SFPL did not have the resources to incur these additional costs. Currently, the SFPL only allows its staff and individuals or organizations invited to make presentations to the SFPL Commission to use the SFPL computers to connect to its audio visual equipment. These are materials and presentations the SFPL Commission has requested and are provided to the SFPL ahead of time for review and coordination with SFPL technology system. For these reasons, Mr. Hartz' request was declined. (See attached letter to Mr. Hartz dated March 5, 2013.)

Subsequently, Mr. Hartz filed a complaint with the SOTF which was heard on July 9, 2013. The SOTF found the SFPL Commission in violation of Administrative Code Section 67.15 for abridging public comment by not providing access to audio visual equipment. The matter was also referred to the SOTF Compliance and Amendments Committee and referred back to the SOTF.

As a result of the finding by the SOTF, City Librarian Luis Herrera followed the recommendation of the SOTF and brought the matter to the SFPL Commission for discussion and possible action to allow the use of audio visuals during public comment. (See memo from the City Librarian to the Library Commission dated August 12, 2013.) The department also sought opinion from the City Attorney's Office. The City Attorney's Office advised that whether the Library provides access to the audio visual equipment is a policy determination of the SFPL Commission because neither the Brown Act nor the Sunshine Ordinance gives members of the public the right to access, during public comment, to SFPL audiovisual technology. Specifically, Administrative Code section 67.15 addresses the right to public comment but does not prescribe the method, means or mode of technology that SFPL Commission must allow the public to use during public comment. (See attached Chapter 67.15, San Francisco Administrative Code Sunshine Ordinance.)

The SFPL Commission met on August 15, 2013 and voted 6-0 to not allow the use of audio visual equipment for public comment because allowing members of the public to use audio visuals during public comment would require SFPL to expend significant resources to make the necessary accommodations to modify the technology set up that SFPL uses. The SFPL Commission made it clear that the public could bring printed copies of presentations to the Commission and have them available at the back of the room. (See attached Library Commission Minutes for August 15, 2013.)

On October 2, 2013, the Task Force heard the matter again and it moved to find SFPL Commission in violation of the Sunshine Ordinance, although the Order of Determination found against the SFPL Commission.

Discussion

As City Librarian, I follow the policy direction established by the Library Commission. City Charter Section 4.102 Boards and Commissions – Powers and Duties states:

... [E]ach appointive board, commission or other unit of government of the executive branch of the city and County shall:

1. Formulate, evaluate and approve goals, objectives, plans and programs and set policies consistent with the overall objectives of the City and County, as established by the Mayor and the Board of Supervisors through the adoption of City legislation; ...
3. After public hearing approve applicable departmental budgets or any budget modifications or fund transfers requiring the approval of the board of supervisor.

(Charter Section 4.102).

I brought the matter regarding the use of audio visual equipment to the attention of the SFPL Commission and provided information for them to fully discuss and deliberate the matter and ultimately arrive at a decision. Their decision declining the use of audio visual equipment by members of the public during public comment while allowing copies of their printed presentations is their policy decision and I have adhered to that policy. Therefore, I did not violate the Sunshine Ordinance.

Furthermore, I wish to reiterate that the SFPL Commission did not violate Administrative Code section 67.15(a) or 67.15(b) because the decision not to expend significant resources to make the necessary accommodations to modify the technology at SFPL Koret Auditorium was based on fiscal matters. Administrative Code section 67.15(a) requires that SFPL provide on agendas for regular meetings an opportunity for general public comment and an opportunity for public comment on specific agenda items. (Administrative Code 67.15(a); See also Good Government Guide p.119). Admin. Code

section 67.15(d) states that "a policy body shall not *abridge or prohibit public criticism of the policy, procedures, programs or services of the City...*" (emphasis added).

Every member of the public, including Mr. Hartz is afforded the opportunity to provide comment during general public comment and on each specific item on the agenda. The SFPL Commission does not abridge or prohibit Mr. Hartz from complimenting or criticizing SFPL's policies, procedures, or programs. The SFPL Commission does not discriminate on the basis of content or viewpoint. No member of the public is allowed to use the audiovisual equipment during public comment. The SFPL Commission does not pick and choose which member of the general public may use the audiovisual equipment during public comment. Therefore, the decision is not based on content. Finally, the City Attorney's Office has advised the SFPL Commission that neither the Brown Act nor the Sunshine Ordinance gives members of the public the right of access during public comments to audio visual technology. This is a policy decision that rests with SFPL Commission. In particular, Administrative Code Section 67.15 which specifically addresses the right to public comments in San Francisco does not prescribe the method, means or mode of technology that SFPL must allow the public to use during public comment. For all these reasons, SFPL Commission did not violate Administrative Code sections 67.15(a), 67.15(b), and 67.17(d). SFPL Commission has met its burden and shown that it did not violate the Sunshine Ordinance.

Sincerely,



Luis Herrera
City Librarian

Attachments

Cc: Sue Blackman, Alicia Cabrera, Jewelle Gomez, Ray Hartz



San Francisco Public Library

March 5, 2013

Mr. Ray Hartz
839 Leavenworth Street, Apt. 304
San Francisco, CA 94109-6131
Via email: rvhartzir@sbcglobal.net

Dear Mr. Hartz,

On January 14, 2013, you requested that the San Francisco Public Library (SFPL) allow members of the public to use audiovisual aids to support their public comments. You assert that SFPL denies the public access to the audiovisual aids in an effort to abridge public criticism. You also assert that such action violates San Francisco Administrative Code Section 67.15, which prohibits a policy body from "abridg[ing] or prohibit[ing] public criticism of the policy, procedures, programs or services of the City ..."

I respectfully disagree. The Commission does not discriminate on the basis of viewpoint in allowing members to exercise their right to address public comments to the Commission. Further, neither the Brown Act nor the Sunshine Ordinance gives members of the public the right of access during public comment to SFPL audiovisual technology. In particular, Administrative Code Section 67.15, which specifically addresses the right to public comment in San Francisco, does not prescribe the method, means, or mode of technology that SFPL must allow the public to use during public comment.

Library staff have explored options to accommodate your request. We looked at providing the public with a basic transparency device that uses an overhead projector. However, this option was not viable as the projector could not project the image on the auditorium stage screen to allow the public and commissioners to view. The only option available for audio visual presentations at the SFPL Commission meetings would require reconfiguring the department's information technology set up to allow for the public to download their presentations from a laptop from the public lectern. This option would require the library department to incur additional expense and resources. Specifically, we would need to enlist the services of engineering staff and a construction contractor to modify the cable set up, including running cables under the stage to the public lectern, where members of the public would place a laptop or use a jump drive to connect to the stage podium and projection room. Additional equipment costs to provide the interface for the laptop and modifying the lectern to accommodate the equipment and ensure proper ADA set up would also be necessary. Preliminary cost estimates from our facilities department working with the Department of Public Works places that cost at a minimum of \$40,000. The Library Department does not have the resources to incur these additional costs.

Currently, the Commission allows only SFPL staff and individuals or organizations invited to make presentations to the Commission to use the Library's computers to connect to its audio visual equipment. For example, the architects as part of the Bond Managers report, other City departments or the Friends of the Library may have, on occasion, connected their laptops or preloaded materials to SFPL audiovisual equipment for presentations that the Commission has invited them to make for items that the Commission has placed on its agenda. However, SFPL staff have expended resources to load the materials into the Library's information processing system ahead of time. Where the Commission invites private parties to make presentations, SFPL expends its resources as necessary to effect those presentations. Otherwise, the department uniformly declines to allow members of the public, without regard to their viewpoint, to connect their laptops or external devices to the department's audiovisual facilities because of the additional expense and resources discussed above.

Sincerely,

Luis Herrera
City Librarian



San Francisco Public Library

DATE: August 12, 2013
TO: Library Commission
FROM: Luis Herrera, City Librarian
CC: Alicia Cabrera, Deputy City Attorney
RE: Use of Audio Visual Aids by Members of the Public

At the July 18, 2013 Library Commission meeting, I reported the matter regarding the Sunshine Ordinance Task Force findings on a complaint filed by Mr. Ray Hartz concerning the use of Audio Visual aids by members of the public during public comment. Mr. Hartz had requested that the Library Commission allow members of the public to use audiovisual aids to support their public comment. His request was declined and Mr. Hartz subsequently filed a complaint with the Sunshine Task Force asserting that the San Francisco Public Library denies public access to audiovisual aids in an effort to abridge public criticism. The complaint also asserts that such action violates San Francisco Administrative Code Section 67.15 which prohibits a policy body from "abridge[ing] public criticism of the policy, procedures, programs or services of the City...."

Background:

The Library explored options to accommodate his request; including providing the public with a basic transparency device that uses an overhead projector. This option was not viable as the projector could not project the image on the auditorium screen to allow the public and commission to view. The only option available for audio visual presentation at the SFPL Commission meeting would require reconfiguring the department's information technology set up to allow for the public to download their presentations from a laptop from the public. This option would require the library department to incur additional expense and resources. Specifically, it would require the services of engineering staff and a construction contractor to modify the cable set up, including running cables under the stage podium and projection room. Additional equipment costs to provide the interface for the laptop and modifying the lectern to accommodate the equipment and ensure proper ADA set up would be necessary. Preliminary costs estimate from our facilities department working with the Department of Public Works places that cost at a minimum of \$40,000, which is not included in this year's budget.

The Library Commission allows only SFPL staff and individuals or organizations invited to make presentations to the Commission to use the Library's computers to connect to its audio visual equipment. For example, the architects making presentations as part of the Bond Manager's BLIP report, other City departments, or the Friends of the Library may have, on occasion, connected their laptops or preloaded materials to SFPL audiovisual equipment for presentation on items on the agenda.

For these reasons, Mr. Hartz' request was declined. I provided a response to Mr. Hartz outlining the reasons why his request was declined in a letter dated March 5, 2013. The letter also states that "the Commission does not discriminate on the basis of viewpoint in allowing members of the public to exercise their right to address public comments to the Commission. Further, neither the Brown Act nor the Sunshine Ordinance gives members of the public the right of access during public comment to SFPL audiovisual technology. In particular, Administrative Code Section 67.15, which specifically addresses the right to public comment in San Francisco, does not prescribe the method, means, or mode of technology that SFPL must allow the public to use during public comment.

Discussion and possible action:

The Sunshine Ordinance Task Force heard the complaint on July 9, 2013 and found the Library in violation of Admin. Code Sec. 67.15(a)(d) for abridging public comment by not providing equal access of audio visual equipment to invited parties and the public and referred the matter to the Sunshine Ordinance Task Force Compliance and Amendments Committee.

The item before the Library Commission at the August 15 meeting is an opportunity to discuss and take possible action regarding this matter. The Library Commission may choose to allow members of the public to use audio visuals during public comment by supporting additional expenses and resources discussed above in order to make the necessary accommodations to modify the current technology set up. However, the city attorney had opined that whether the Library provides the public with access to the audio visual equipment is a policy call because neither the Brown Act nor the Sunshine Ordinance gives members of the public the right of access during comment to audiovisual technology, nor does the Ordinance prescribe the method, means, or mode of technology that SFPL must allow the public to use during public comment (see attached Sec. 67.15. Public Testimony).

SEC. 67.15. PUBLIC TESTIMONY.

(a) Every agenda for regular meetings shall provide an opportunity for members of the public to directly address a policy body on items of interest to the public that are within policy body's subject matter jurisdiction, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by Section 67.7(e) of this article. However, in the case of a meeting of the Board of Supervisors, the agenda need not provide an opportunity for members of the public to address the Board on any item that has already been considered by a committee, composed exclusively of members of the Board, at a public meeting wherein all interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the Board.

(b) Every agenda for special meetings at which action is proposed to be taken on an item shall provide an opportunity for each member of the public to directly address the body concerning that item prior to action thereupon.

(c) A policy body may adopt reasonable regulations to ensure that the intent of subdivisions (a) and (b) are carried out, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker. Each policy body shall adopt a rule providing that each person wishing to speak on an item before the body at a regular or special meeting shall be permitted to be heard once for up to three minutes. Time limits shall be applied uniformly to members of the public wishing to testify.

(d) A policy body shall not abridge or prohibit public criticism of the policy, procedures, programs or services of the City, or of any other aspect of its proposals or activities, or of the acts or omissions of the body, on the basis that the performance of one or more public employees is implicated, or on any basis other than reasonable time constraints adopted in regulations pursuant to Subdivision (c) of this Section.

(e) To facilitate public input, any agenda changes or continuances shall be announced by the presiding officer of a policy body at the beginning of a meeting, or as soon thereafter as the change or continuance becomes known to such presiding officer.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

AGENDA ITEM 2. USE OF AUDIO VISUAL EQUIPMENT BY THE PUBLIC

Luis Herrera, City Librarian, referred to a memo in the Commissioner's packet and explained the background of the item. He said there is also a letter to Mr. Ray Hartz dated March 5, 2013 and a copy of Section 67.15 Public Testimony of the Sunshine Ordinance. He said Mr. Hartz had requested that members of the public be able to use audio visual aids to support public comment. His request was declined by the library and he subsequently filed a complaint with the Sunshine Ordinance Task Force (SOTF). He said Mr. Hartz asserts that the Library denies public access to audiovisual aids to abridge public criticism and he also asserts that such action violates San Francisco Administrative Code Section 67.15. He said the Library did explore options to accommodate his request including providing the public with a basic transparency device that uses an overhead projector. He said this option was not feasible as the projector could not project the image on the auditorium screen to allow the public and commission to view. He said the only option available for audio visual presentations at the Library Commission meeting would require reconfiguring the Library's information technology set up to allow the public to download their presentations from a laptop. He said this option would require expenditure of additional expenses and resources. He said engineering staff and a construction contractor would need to modify the cable set up, including running cables under the stage podium and into the projection room. He said we conferred with the Department of Public Works to ensure proper ADA setup and the preliminary cost estimate range was up to \$40,000 which is not included in this year's budget. He said the Library Commission only allows SFPL staff and individuals or organizations invited to make presentations to the Commission to use the Library's computers to connect to its audio visual equipment. He said for these reasons Mr. Hartz' request was declined. He said the SOTF heard the complaint on July 9 and found the Library in violation of Administrative Code Section 67.15 for abridging public comment by not providing access to the audiovisual equipment. He said they referred the matter to the SOTF Compliance and Amendments Committee. He said the item before you will give the Commission the opportunity to discuss and possibly take action on this matter. The Commission may choose to allow members of the public to use audio visuals during public comment by supporting additional expenses and resources. He said the City Attorney has opined that whether the Library provides the public with access to the audio visual equipment is a policy call because neither the Brown Act nor the Sunshine Ordinance prescribes the method, means, or mode of technology that SFPL must use to allow the public to use during public comment.

Public Comment

An anonymous citizen said this is a situation where Stacey Aldrich the State Librarian appeared before you last February and she described how communication is becoming more digital and visual and it is necessary in order to allow full discourse. He said you have in front of you a copy of the law and two letters from the City Librarian. He asked where are the letters from Ray Hartz, where is the complaint, where are the deliberations from the Sunshine Ordinance Task Force or the SOTF's Order of Determination. He said you have none of that in front of you nor do you have anything from the City Attorney that supports Luis

Herrera's characterization of their opinion. He said this is a basic right. He said the law doesn't say that you have to provide visual access. He said what the law says is that you have to provide equality and equal treatment in a public forum. He said this is a situation where this Library Commission can just say no. He said you have not been given a draft resolution so that you can see what it would look like to approve or reject. He said you have not been given any of the real information about why this is not only good policy but the law and why the SOTF approved it. He said the Commission should simply say that you are going to reject this one-sided abuse of the Commission's intelligence and approve the citizen's access to the graphics.

The following written summary was provided by the speaker, anonymous citizen. The content is neither generated by, nor subject to approval or verification of accuracy by the Library Commission.

Stop the Hate, Stop the Ignorance – Don't give money to, or accept money from the Friends of the Library. The mot de Coulter is wonderfully appropriate now. The State Librarian Stacey Aldrich appeared before you in February, 2012, and described how communication is becoming more digital and visual, and that is necessary to modern discourse. You have two letters from the City Librarian. Where are the letters from Mr. Hartz, the Sunshine complaint, the Sunshine Ordinance Task Force's deliberations and determination, or confirmation of the City Attorney's opinion? The law doesn't say you have to provide visual access. It says you have to provide equal treatment in a public forum. You have not even been given a draft resolution to approve. You have no information on why the Sunshine Task Force approved it. Just say, No. You can reject this one-sided abuse of your intelligence and approve the citizen's access to graphics.

Ray Hartz, Director San Francisco Open Government, said he knows what to expect because there will be claims that you need to spend more than \$40,000 to comply, that there are security risks, that the law does not require you to allow access, ad nauseam. He said what he submitted was two PowerPoint slides and you will see in your packets that there are two or three presentations all done in the same format and that is all it takes to include his input. He said you don't have to spend \$40,000, if you have a security risk print the documents out and scan them with your own equipment. He said these are two quotes from the authors Frank Herbert and Upton Sinclair. He said if that isn't censorship, I don't know what is. He said as he said at the SOTF hearing, all he is asking for is equal treatment. He said include his Microsoft PowerPoint slides just as you do for those of whom you approve. He said perhaps it would be more accurate to say for those who approve of you. He said it is bad enough that you have to let us speak and you can't censor what we say. He said your fear is that we would be even more effective. He said he knows there is one question that will not be asked or if it is asked it will not be answered. He said why do you want so badly to restrict what we have to say. He said the Commission is afraid we will show charts with real numbers showing that out of \$53 Million what the library got was 6% or 8% of the money. He said we have a group that raises money for the library but really raised the money to spend on themselves.

The following written summary was provided by the speaker, Ray Hartz. The content is neither generated by, nor subject to approval or verification of accuracy by the Library Commission.

How I expect this "discussion" to go: claims that you need to spend more than \$40,000 to comply, that there are security risks, that the law does not require you to allow access, ad nauseam. "Straw men" set up to allow you to "pretend to discuss" restrictions on public comment. As I said at the SOTF hearing: all I'm asking for is equal treatment! Include my Microsoft PowerPoint slides just as you do for those who you approve. Perhaps it would be more accurate to say for those who approve of you? It's bad enough that you have to let us speak and you can't censor what we say! Your fear is that we would be even more effective! I know there is one question that will not be asked, or if it is will not be answered: why do you want so badly to restrict what we say?

Peter Warfield, Library Users Association, said this is both a sad moment and an opportunity for this Library Commission to show some level of responsibility and of legal behavior. He said he expects no action and very little real discussion. He said the SOTF heard Mr. Hartz' complaint and the Library's defense of its actions refusing to provide PowerPoint displays for the public. He said the Library brought their head of Facilities and the Library was practically laughed out of the room. He said the Task Force members were openly skeptical and scoffing and counting reasons given by the Library. He said the request Mr. Hartz has made is for the same treatment as other people that you have presenting including others like the Friends that have no connection with the Library. He said there would be no requirement whatsoever for any change of equipment. He said Mr. Hartz pointed out that if you are worried about security issues you can simply print out the document, scan it and include it in what you present to the public when the public speaks. He said even if what he thinks is a preposterously inflated number of \$40,000, what is equal access worth for democracy. He said you spend money on ADA requirements and you spend money on these microphones. He said \$40,000 is a speck of dust compared to your \$100 Million budget this year. He said the City Librarian could foot the bill himself with just his own discretionary fund that he gets from the Friends.

Robert B. Livingston said he has a lot of problems with this Library and there are three things he would like to ask for. He said first thing is anybody that comes to this Library gets on the elevator and they discover the buttons aren't lit so they have to guess which one is opening for them. He said fix the buttons in the elevator. He said second when you get out on the third floor you look out the window and you see a ledge out there with a crushed can and wet newspaper that have been there for God knows how long and it seems like people working in this environment would notice something like that and have it cleaned off. He said the last thing is if you go into any Department Store multi-level you find a menu on the inside of the elevator that directs you to what is on each floor and the library should have the same thing.

Commission Discussion

President Gomez said thank you to staff for framing our discussion and giving us the information that we are able to consider. She said she would make a

correction to one thing that was said by a member of the public that these particular three people who are lobbying for this audiovisual access indicate that everyone else from the public has the opportunity, including the Friends who do not have a direct connection to the Library and she thinks that is not actually true. She said the only people we have using audiovisual equipment to make presentations are those with whom we do have a direct connection, which does not include people of the general public who just want to make comments. She said while the SOTF seemed to indicate that this was an abridgement of rights, she said she does not think the Sunshine Ordinance or the Brown Act directs us that we are required to have that access to the general public. She said she does not feel like we are losing people's comments. She said they get plenty of comments that are articulated well enough for us to understand without the addition of audiovisual presentations. She said she does not feel suspicious that our City Librarian is not giving us full information from our City Attorney. She said she feels that this policy is a policy of the San Francisco Public Library Commission and no other commission is in a place to see how our policies are enacted. She said that is her understanding.

Commissioner Mall asked what other Commissions do.

Luis Herrera, City Librarian, said that Commissions that meet at City Hall that have the set up for this do allow this. He said there are others that do not.

Sue Blackman, Library Commission Secretary, said there are a couple of Commissions that do not meet at City Hall that do not allow use of the audio visual equipment and there are others that do. She said it is just a policy of each Commission.

Commissioner Mall asked if the three minute allotment that we allow for public comment includes the time for the audiovisual set up.

President Gomez said the three minutes would include that during the course of the meeting, but she said any set up would have to happen with staff prior to the meeting.

Luis Herrera, City Librarian, read Administrative Code Section 67.15 (c) "...Each policy body shall adopt a rule providing that each person wishing to speak on an item before the body at a regular or special meeting shall be permitted to be heard once for up to three minutes. Time limits shall be applied uniformly to members of the public wishing to testify." He said it does not speak specifically to any other permeation to that but it does specify upwards to three minutes.

Commissioner Ono asked what is involved in the \$40,000 set up.

Luis Herrera, City Librarian, said the AV laptop is currently set up on the lectern on the stage and in order to connect it to the public lectern we would have to run cables underneath the auditorium to hook it up there. He said in addition it would require modifications to allow for the laptop to be accessible to anyone with physical disabilities. He said DPW did the estimate of the costs.

Commissioner Lee said there is a comment about the two slides and that they would be missed if they did not have the slides. He said he observed that when public comment was given the copies could be given to the Secretary and they could be included in the Minutes. He said if they are included in the Minutes they would be available on the website and there would be nothing hidden and we would not need to spend the \$40,000.

President Gomez asked about the 150 word summaries.

Sue Blackman, Library Commission Secretary, said the documents brought in by the public would be referred to in the Minutes but they would not be incorporated into the Minutes like the 150 word statements are.

Commissioner Randlett asked if there is anything that prevents printed materials being available by the public in the back of the auditorium.

Sue Blackman, Library Commission Secretary, said there is nothing to prevent the public from bringing copies of printed materials and placing them at the back of the auditorium.

Commissioner Randlett said this would be a low-tech solution that if somebody had a PowerPoint they wanted everyone in the forum to see that they could print it and leave it at the back of the auditorium and advise people that if they wanted to see it, it was available and copies could be made available to the Commissioners.

Commissioner Munson said when we have an audiovisual presentation it is at the request of the Commission or City Librarian and it is part of a program that is planned to inform the public. He said this is one of the ways we communicate about the basic business of the Commission. He said that the presenters have a contract with the Library. He said if members of the audience want to make comments they have their three minutes to do so. He said the Commission spends a lot of time listening to public comment and some of it is helpful and some of it is not helpful. He said there can be different opinions about what is being said. He said if the Commission wants to reserve this means of communication that is reasonable. He said if the public presents all kinds of stuff, the meetings could get very long and could be confusing to the public. He said a person that disagrees can provide written material at the back of the room and talk at the podium for three minutes. He said we are trying to get the job done.

Motion: By Commissioner Randlett, seconded by Commissioner Mall given the concern that is being raised by the public that they do not have the ability to present materials to all those at the meeting in some type of presentation form that they do have the ability to bring materials in a printed form and that they use their time in public comment to be able to go through the materials and that if other people have questions they can ask the speakers at the end of the meeting in the back of the room.

Action: AYES 6-0: (Lee, Gomez, Mall, Munson, Ono, and Randlett.)



ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

BENEDICT Y. HUR
CHAIRPERSON

PAUL A. RENNE
VICE-CHAIRPERSON

BRETT ANDREWS
COMMISSIONER

BEVERLY HAYON
COMMISSIONER

PETER KEANE
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

Via U.S. Mail & E-mail

Date: March 5, 2014

To: Ray Hartz, Complainant
Luis Herrera, City Librarian, Respondent

From: John St. Croix, Executive Director

Re: **NOTICE of SHOW CAUSE HEARING: March 24, 2014 at 5:30 PM**
Complaint No. 04-140303

On March 3, 2014, the Sunshine Ordinance Task Force ("Task Force") delivered a referral letter and an Order of Determination ("Order") to the Ethics Commission. The referral was made pursuant to section 67.30(c) of the Sunshine Ordinance and named Luis Herrera, City Librarian, as the Respondent.

According to the Order, the Task Force held a hearing on the matter on July 9, 2013. The complainant, Ray Hartz, alleged that "the Respondent violated the Sunshine Ordinance by failing to provide equal access to members of the public to Library audiovisual equipment for use during public comment at Library Commission meetings, thereby abridging their speech." The Task Force found that the Library Commission violated sections 67.15(a) and 67.15(b) of Sunshine Ordinance for abridging public comment by not providing equal access to audio visual equipment by invited parties and the public.

The written Order was issued on August 19, 2013 and ordered the agency to provide equal access to its audio visual equipment and to appear before the Compliance and Amendments Committee on September 17, 2013. The Compliance and Amendments Committee heard the matter on September 17, 2013 and referred the matter back to the Task Force.

On October 2, 2013, the Task Force heard the matter again. It moved to find Luis Herrera in violation of the Sunshine Ordinance as determined in its Order of Determination and referred the matter to the Ethics Commission.

HEARING PROCEDURES & SCHEDULING:

This matter will be heard under **Chapter Two** of the Ethics Commission Regulations for Handling Violations of the Sunshine Ordinance ("Regulations"). This matter is

scheduled to be heard at a Show Cause Hearing during the next regular Ethics Commission meeting at 5:30 PM on Monday, March 24, 2014, in Room 400 in City Hall.

According to Chapter Two of the Regulations, the Respondent bears the burden to show that he or she did not violate the Sunshine Ordinance. (*See* Regulations, Chapter Two, § II.B.) The Commission shall deliberate this matter in public and public comment will be allowed at the hearing. (*See* Regulations, Chapter Two, § II.D.) The votes of at least three Commissioners are required to make a finding that a Respondent has met his or her burden and has not committed a violation of the Sunshine Ordinance. The finding shall be supported by findings of fact and conclusions of law and shall be based on the entire record of the proceedings. (*See* Regulations, Chapter Two, § II.D.)

Neither the Respondent nor the Complainant is required to attend the hearing. However, if either party fails to appear, and the Commission did not grant the party a continuance or reschedule the matter under Chapter IV, section I.E, then the Commission may make a decision in the party's absence. Any Respondent or Complainant may request the continuance of a hearing date in writing. The requester must deliver the written request to the Commission Chairperson, and provide a copy of the request to all other parties no later than ten business days before the date of the hearing, or no later than Friday, March 7, 2014.

The Respondent and the Complainant may speak on his or her own behalf, subject to the following time limits: Respondent shall be permitted a five-minute statement; Complainant shall be permitted a five-minute statement; and Respondent shall be permitted a three-minute rebuttal.

Unless otherwise decided by the Commission, formal rules of evidence shall not apply to the hearing. Each Respondent and Complainant may submit any documents to the Commission to support his or her position. Each party's written submission shall not exceed five pages, excluding supporting documents. Any documents so provided shall also be provided to the opposing party and shall be delivered to the Commission no later than five business days prior to the scheduled hearing, or no later than Friday, March 14, 2014.

Copies of all of the documents received from the Task Force regarding this matter have been attached to this memorandum; a copy of the Regulations is also attached.

SUNSHINE ORDINANCE
TASK FORCE



March 3, 2014

San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102

City Hall

1 Dr. Carlton B. Goodlett Place, Room 244

San Francisco 94102-4689

Tel. No. (415) 554-7724

Fax No. (415) 554-7854

TDD/TTY No. (415) 554-7227

14 MAR -3 PM 2:46

FILED

SAN FRANCISCO
ETHICS COMMISSION

**Re: Sunshine Ordinance Task Force (SOTF) referral to the Ethics Commission –
Ray Hartz Jr. against Luis Herrera, City Librarian (Sunshine Ordinance Complaint
No. 13013)**

Dear Ethics Commission:

On July 9, 2013, the Sunshine Ordinance Task Force heard Complaint No. 13013, by Ray Hartz Jr. (Complainant) against Luis Herrera, City Librarian (Respondent). The Complainant alleged that the Respondent violated the Sunshine Ordinance by failing to provide equal access to members of the public to Library audiovisual equipment for use during public comment at Library Commission meetings, thereby abridging their speech.

Mr. Hartz appeared before the Task Force and presented his claim. Respondents Sue Blackman, Library Commission Secretary, and Roberto Lombardi, Library Logistics, presented the Library's defense. The issue in the case was whether the Agency violated Sunshine Ordinance Section 67.15 of the Ordinance.

Based on the testimony and evidence presented, the Task Force found the testimony of Mr. Hartz to be persuasive and finds Sections 67.15(a) and 67.15(d) of the Ordinance to be applicable in this case. The Task Force does not find testimony provided by the Library persuasive to this case. An Order of Determination was issued on August 19, 2013.

At the September 17, 2013, the Compliance and Amendments Committee, Mr. Hartz provided an update on the August 19, 2013, Order of Determination from the July 9, 2013, SOTF meeting. Mr. Hartz stated the Library has not allowed access to its audio visual equipment, failing to comply with the Order of Determination. Michael Jeffers, Library (Respondent), referred the committee to the Library's letter dated September 12, 2013, stating the Library Commission voted 6-0 to bar use of Library-provided audio-visual equipment for public comment, because allowing members of the public to use audio-visuals during public comment would require the Library to expend significant

<http://www.sfgov.org/sunshine/>

resources to make the necessary accommodations to modify the technology set up that the Library uses.

- Member Grant, seconded by Chair Washburn, moved to refer the matter back to the Task Force with notice to be sent requiring the City Librarian to attend the Task Force's next proceedings on the matter; recommendation of referral to Ethics Commission.

At the October 2, 2013, SOTF meeting Mr. Hartz provided an updated and overview of the complaint. Sue Blackman, Library Commission Secretary (Respondent), provided an overview of the department's defense.

Member Washburn, seconded by Member David, moved to find Luis Herrera, City Librarian, in violation of the Sunshine Ordinance as determined in the Order of Determination; referral to the Ethics Commission and the Board of Supervisors for enforcement.

This request and referral is made under Section 67.30(c) whereby the Task Force shall make referrals to a municipal office with enforcement power under the Sunshine Ordinance or under the California Public Records Act and the Brown Act whenever it concludes that any person has violated any provisions of this Ordinance or the Acts.

Thank you for your timely attention to this matter. A description of the Task Force hearing, violations found, and decision are described in the attached Order of Determination. Please contact the Sunshine Ordinance Task Force Administrator at sotf@sfgov.org or (415) 554-7724 with any questions or concerns.



Kitt Grant, Chair
Sunshine Ordinance Task Force

Encl.

- c: Ray Hartz Jr., Complainant
Luis Herrera, City Librarian
Sue Blackman, Library Commission
Nicholas Colla, Deputy City Attorney
Jerry Threet, Deputy City Attorney



ORDER OF DETERMINATION

August 19, 2013

DATE THE DECISION ISSUED

July 9, 2013

RAY HARTZ VS. CITY LIBRARIAN LUIS HERRERA (13013)

FACTS OF THE CASE

Ray Hartz ("Complainant") alleges that the City Librarian, Luis Herrera (the "Librarian") violated the Ordinance by failing to provide equal access to members of the public to Library audiovisual equipment for use during public comment at Library Commission meetings, thereby abridging their speech.

COMPLAINT FILED

On March 4, 2013, Complainant filed a complaint with the Task Force alleging a violation of Section 67.15 of the Ordinance.

HEARING ON THE COMPLAINT

On July 9, 2013, Complainant, Mr. Hartz appeared before the Task Force and presented his claim. Respondents Sue Blackman, Library Commission Secretary and Roberto Lombardi, Library Logistics presented the Library's defense.

The issue in the case is whether the Agency violated Section 67.15 of the Ordinance.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the testimony and evidence presented the Task Force finds the testimony of Complainant Mr. Hartz to be persuasive and finds that Sections 67.15(a) and 67.15(d) to be applicable in this case. The Task Force does not find testimony provided by the Library persuasive to this case.

DECISION AND ORDER OF DETERMINATION

The Task Force finds that the Library Commission violated Section 67.15(a) and 67.15(b) of the Sunshine Ordinance for abridging public comment by not providing equal access to audio visual equipment by invited parties and the public. The Library Commission shall provide equal access to its audio visual equipment and appear before the Compliance and Amendments Committee on September 17, 2013 for a hearing on its compliance with this Order.

FILED
14 MAR -3 PM 2:47
SAN FRANCISCO
ETHICS COMMISSION
BY _____

This Order of Determination was adopted by the Sunshine Ordinance Task Force on July 9, 2013 by the following vote: (Sims/Oka)

Ayes: Knee, Washburn, Sims, David, Hyland, Oka, Fischer, Grant

Noes: Pilpel



Kift Grant, Chair
Sunshine Ordinance Task Force

- Jerry Threet, Deputy City Attorney
- Ray Hartz, Jr., Complaint
- Sue Blackman, Library Commission Secretary, Respondent
- Roberto Lombardi, Library Logistics, Respondent



SUNSHINE ORDINANCE TASK FORCE CITY AND COUNTY OF SAN FRANCISCO AGENDA

Hearing Room 406
City Hall, 1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

July 9, 2013 – 4:30 PM

Special Meeting

1. CALL TO ORDER, ROLL CALL, AND AGENDA CHANGES

Seat 1	<i>(Vacant)</i>	Seat 8	Todd David
Seat 2	Richard Knee <i>(Hold Over)</i>	Seat 9	Chris Hyland
Seat 3	Kitt Grant – Chair	Seat 10	Louise Fischer – Vice Chair
Seat 4	<i>(Vacant)</i>	Seat 11	Bruce Oka
Seat 5	Allyson Washburn <i>(Hold Over)</i>		
Seat 6	David Pilpel	Ex-officio	Angela Calvillo
Seat 7	David Sims	Ex-officio	<i>(Vacant)</i>

2. **File No. 12007:** The Education, Outreach and Training Committee has referred File No. 12007, the Library Users Association against Supervisor Campos for responding late to an immediate disclosure request and redacting information from Bernal Heights Branch Library Mural related documents inappropriately. *(approximately 15 minutes)*
(Discussion and Possible action) (attachment)
3. **File No. 13005:** Complaint filed by Paula Datesh against the Arts Commission for allegedly failing to respond to an Immediate Disclosure Request for records pertaining to the operations of the Arts Commission. *(attachment)*
- (a) Determination of jurisdiction on complaint filed by Paula Datesh against the Arts Commission for allegedly failing to respond to an Immediate Disclosure Request for records pertaining to the operations of the Arts Commission. *(approximately 5 minutes) (Discussion and Action)*
 - (b) Hearing on complaint filed by Paula Datesh against the Arts Commission for allegedly failing to respond to an Immediate Disclosure Request for records pertaining to the operations of the Arts Commission. *(approximately 45 minutes) (Discussion and Action)*

4. **Public Comment:** Members of the public may address the Sunshine Ordinance Task Force (SOTF) on matters that are within SOTF's jurisdiction, but not on today's agenda. *(No Action) Public comment shall be taken at 5:00 pm or as soon thereafter as possible.*
5. **File No. 13011:** Complaint filed by Paula Datesh against the Arts Commission for allegedly not providing documents relating to Evelyn Russell, former Arts Commission Secretary. *(attachment)*
 - (a) Determination of jurisdiction on complaint filed by Paula Datesh against the Arts Commission for allegedly not providing documents relating to Evelyn Russell, former Arts Commission Secretary. *(approximately 5 minutes) (Discussion and Action)*
 - (b) Hearing on complaint filed by Paula Datesh against the Arts Commission for allegedly not providing documents relating to Evelyn Russell, former Arts Commission Secretary. *(approximately 45 minutes) (Discussion and Action)*
6. **File No. 13012:** Complaint filed by Glad Tidings Church against the Office of the Assessor-Recorder for allegedly failing to provide complete records associated with Glad Tidings Church and San Francisco Teen Challenge. *(attachment)*
 - (a) Determination of jurisdiction on complaint filed by Glad Tidings Church against the Office of the Assessor-Recorder for allegedly failing to provide complete records associated with Glad Tidings Church and San Francisco Teen Challenge. *(approximately 5 minutes) (Discussion and Action)*
 - (b) Hearing on complaint filed by Glad Tidings Church against the Office of the Assessor-Recorder for allegedly failing to provide complete records associated with Glad Tidings Church and San Francisco Teen Challenge. *(approximately 45 minutes) (Discussion and Action)*
7. **File No. 13013:** Complaint filed by Ray Hartz Jr., against Luis Herrera, City Librarian for allegedly abridging public comment by allowing selective accessibility of library audio visual equipment. *(attachment)*
 - (a) Determination of jurisdiction on complaint filed by Ray Hartz Jr., against Luis Herrera, City Librarian for allegedly abridging public comment by allowing selective accessibility of library audio visual equipment. *(approximately 5 minutes) (Discussion and Action)*
 - (b) Hearing on complaint filed by Ray Hartz Jr., against Luis Herrera, City Librarian for allegedly abridging public comment by allowing selective accessibility of library audio visual equipment. *(approximately 45 minutes) (Discussion and Action)*

8. **File No. 13014:** Complaint filed by Ray Hartz Jr. against Ben Rosenfield, City Controller for allegedly failing to provide filings by the City Librarian, Luis Herrera of gifts from The Friends of the San Francisco Public Library. *(attachment)*
 - (a) Determination of jurisdiction on complaint filed by Ray Hartz Jr. against Ben Rosenfield, City Controller for allegedly failing to provide filings by the City Librarian, Luis Herrera of gifts from The Friends of the San Francisco Public Library. *(approximately 5 minutes) (Discussion and Action)*
 - (b) Hearing on complaint filed by Ray Hartz Jr. against Ben Rosenfield, City Controller for allegedly failing to provide filings by the City Librarian, Luis Herrera of gifts from The Friends of the San Francisco Public Library. *(approximately 45 minutes) (Discussion and Action)*
9. **File No. 13015:** Complaint filed by William Ledford against the Office of the City Attorney for allegedly failing to process and complete an immediate disclosure request. *(attachment)*
 - (a) Determination of jurisdiction on complaint filed by William Ledford against the Office of the City Attorney for allegedly failing to process and completes an immediate disclosure request. *(approximately 5 minutes) (Discussion and Action)*
 - (b) Hearing on complaint filed by William Ledford against the Office of the City Attorney for allegedly failing to process and complete an immediate disclosure request. *(approximately 45 minutes) (Discussion and Action)*
10. **Approval of Minutes from the January 16, 2013 Special Meeting.** *(approximately 5 minutes) (Action) (attachment)*
11. **Approval of Minutes from the February 6, 2013 Regular Meeting.** *(approximately 5 minutes) (Action) (attachment)*
12. **Approval of Minutes from the March 6, 2013 Regular Meeting.** *(approximately 5 minutes) (Action) (attachment)*
13. **Approval of Minutes from the April 3, 2013 Regular Meeting.** *(approximately 5 minutes) (Action) (attachment)*
14. **Approval of Minutes from the May 1, 2013 Regular Meeting.** *(approximately 5 minutes) (Action) (attachment)*
15. **Approval of Minutes from the June 5, 2013 Regular Meeting.** *(approximately 5 minutes) (Action) (attachment)*
16. **Report: Compliance and Amendments Committee meeting of June 18, 2013.** *(approximately 5 minutes) (Discussion) (attachment)*

17. Report: Education, Outreach and Training Committee meeting of June 25, 2013.
(approximately 5 minutes) (Discussion)
18. Administrator's Report. (approximately 5 minutes) (Discussion)
19. Announcements, Comments, Questions, and Future Agenda Items. (approximately 10 minutes) (Discussion and Action)
20. ADJOURNMENT

Agenda Item Information

Each item on the agenda may include: 1) Department or Agency cover letter and/or report; 2) Public correspondence; 3) Other explanatory documents. For more information concerning agendas, minutes, and meeting information, such as these documents, please contact the SOTF Clerk, City Hall, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco, CA 94102.

Audio recordings of the meeting of the Sunshine Ordinance Task Force are available at:
<http://www.sfbos.org/index.aspx?page=9811>

For information concerning Sunshine Ordinance Task Force please contact by e-mail sotf@sfgov.org or by calling (415) 554-7724.

Public Comment

Public Comment will be taken before or during the Committee's consideration of each agenda item. Speakers may address the Task Force for up to three minutes on that item. During General Public Comment, members of the public may address the Task Force on matters that are within the Task Force's jurisdiction and are not on the agenda. Any person speaking during a public comment period may supply a brief written summary of their comments, which shall, if no more than 150 words, be included in the official file.

Each member of the public will be allotted the same maximum number of minutes to speak as set by the Chair at the beginning of each item, excluding persons requested by the Task Force to make presentations.

Each member of the public who is unable to attend the public meeting or hearing may submit to the City, by the time the hearing begins, written comments regarding the subject of the meeting or hearing. These comments will be made a part of the official public record.

Hearing Procedures

- | | |
|---|----------------------|
| 1. Complainant presents his/her facts and evidence | 5 minutes |
| Other parties of Complainant present facts and evidence | Up to 3 minutes each |
| 2. City responds | 5 minutes |
| Other parties of City respond | Up to 3 minutes each |
| <i>Above total speaking times for Complainant and City to be the same.</i> | |
| 3. Matter is with the Task Force for discussion and questions. | |
| 4. Respondent and Complainant presents clarification/rebuttal | 3 minutes |
| 5. Matter is with the Task Force for motion and deliberation. | |
| 6. Public comment (Excluding Complainant & City response, witnesses) | Up to 3 minutes each |
| 7. Vote by Task Force (Public comment at discretion of chair on new motion and/or on new motion if vote fails.) | |

Note: Time must be adhered to. If a speaker is interrupted by questions, the interruption does not count against his/her time.

Disability Access

The hearing rooms in City Hall are wheelchair accessible. Assistive listening devices for the hearing rooms are available upon request with the SOTF Clerk. The nearest accessible BART station is Civic Center (Market/Grove/Hyde Streets). Accessible MUNI Metro lines are the F, J, K, L, M, N, T (exit at Civic Center or Van Ness Stations). MUNI bus lines also serving the area are the 5, 6, 9, 19, 21, 47, 49, 71, and 71L. For more information about MUNI accessible services, call (415) 701-4485. There is accessible parking in the vicinity of City Hall at Civic Center Plaza and adjacent to Davies Hall and the War Memorial Complex. Accessible curbside parking is available on Dr. Carlton B. Goodlett Place and Grove Street.

The following services are available on request 48 hours prior to the meeting; except for Monday meetings, for which the deadline shall be 4:00 p.m. of the last business day of the preceding week: For American sign language interpreters or the use of a reader during a meeting, a sound enhancement system, and/or alternative formats of the agenda and minutes, please contact the SOTF Clerk at (415) 554-7724 to make arrangements for the accommodation. Late requests will be honored, if possible.

In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City accommodate these individuals.

Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils, and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code) or to report a violation of the ordinance, contact: Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco, CA 94102; phone (415) 554-7724; fax (415) 554-7854; or email sotf@sfgov.org.

Citizens may obtain a free copy of the Sunshine Ordinance by printing Chapter 67 of the San Francisco Administrative Code on the Internet, at <http://www.sfbos.org/sunshine>.

Cell Phones, Pagers and Similar Sound-Producing Electronic Devices

The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing electronic devices (Chapter 67A of the San Francisco Administrative Code).

Lobbyist Registration and Reporting Requirements

Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Campaign & Governmental Conduct Code §2.100, et. seq] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at: 25 Van Ness Avenue, Suite 220, San Francisco, CA 94102; telephone (415) 581-3100; fax (415) 252-3112; web site www.sfgov.org/ethics

File No. 13013

SOTF Item No. 7
CAC Item No. _____

SUNSHINE ORDINANCE TASK FORCE
AGENDA PACKET CONTENTS LIST

Sunshine Ordinance Task Force (SOTF)

Date: July 9, 2013

Compliance and Amendments Committee (CAC)

Date: _____

CAC/SOTF

<input type="checkbox"/>	<input type="checkbox"/>	Memorandum
<input type="checkbox"/>	<input type="checkbox"/>	Order of Determination
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Complaint and Supporting documents
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Respondent's Response
<input type="checkbox"/>	<input type="checkbox"/>	Minutes
<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	

OTHER

<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____

Completed by: Andrea Ausberry Date June 28, 2013

Completed by: _____ Date _____

*An asterisked item represents the cover sheet to a document that exceeds 75 pages.
The complete document is in the file.



RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2013 MAR -4 PM 12:29

SUNSHINE ORDINANCE TASK FORCE
1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102
Tel. (415) 554-7724; Fax (415) 554-7854
<http://www.sfgov.org/sunshine>

SUNSHINE ORDINANCE COMPLAINT

Complaint against which Department or Commission SAN FRANCISCO PUBLIC LIBRARY

Name of individual contacted at Department or Commission LUIS HERRERA, CITY LIBRARIAN

☐ Alleged violation public records access

☒ Alleged violation of public meeting. Date of meeting ALL LIBRARY COMMISSION

Sunshine Ordinance Section 67.15(d)

(If known, please cite specific provision(s) being violated)

Please describe alleged violation. Use additional paper if needed. Please attach any relevant documentation supporting your complaint.

DESPITE REPEATED REQUESTS FROM THE PUBLIC, CITY LIBRARIAN
LUIS HERRERA HAS CONTINUED TO DENY ACCESS TO MEMBERS
OF THE PUBLIC FOR USE OF AUDIOVISUAL EQUIPMENT REGULARLY
PROVIDED TO "APPROVED" GROUPS, THUS ABRIDGING PUBLIC COMMENT

Do you want a public hearing before the Sunshine Ordinance Task Force? ☒ yes ☐ no

Do you also want a pre-hearing conference before the Complaint Committee? ☐ yes ☒ no

(Optional)¹

Name RAY W. HARTZ, JR.

Address

Mr. Ray W. Hartz Jr.
839 Leavenworth St. #304
San Francisco, CA 94109-6131

Telephone No. (415) 345-9144

E-Mail Address RXHARTZJR@SBCGLOBAI.NET

Date MARCH 4, 2013

Ray W. Hartz Jr.
Signature

I request confidentiality of my personal information. ☐ yes ☒ no

¹ NOTICE: PERSONAL INFORMATION THAT YOU PROVIDE MAY BE SUBJECT TO DISCLOSURE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND THE SUNSHINE ORDINANCE, EXCEPT WHEN CONFIDENTIALITY IS SPECIFICALLY REQUESTED. YOU MAY LIST YOUR BUSINESS/OFFICE ADDRESS, TELEPHONE NUMBER AND E-MAIL ADDRESS IN LIEU OF YOUR HOME ADDRESS OR OTHER PERSONAL CONTACT INFORMATION. Complainants can be anonymous as long as the complainant provides a reliable means of contact with the SOTF (Phone number, fax number, or e-mail address).

From: Luis Herrera (lherrera@sfpl.org)
To: rwhartzjr@sbcglobal.net;
Date: Thu, February 21, 2013 2:32:38 PM
Cc: sotf@sfgov.org; acastillo@sfpl.org; sue.a.blackman@sfgov.org; Jerry.Threet@sfgov.org; chaffeej@pacbell.net; libraryusers2004@yahoo.com;
Subject: RE: Audiovisual access at Library Commission meetings - reply

Mr. Hartz,

Staff is continuing to look into the feasibility of making the necessary changes in the media set up in the Library's Koret Auditorium set up in order to accommodate your request to allow for audio visual presentations from the public. I will provide a response to your request as soon as I have the information.

Thank you,

Luis

*Luis Herrera
City Librarian
San Francisco Public Library
100 Larkin Street, Room 600
San Francisco, CA 94102
415-557-4232 - Office
415-557-4239 - Fax
lherrera@sfpl.org*

From: Ray Hartz Jr [mailto:rwhartzjr@sbcglobal.net]
Sent: Thursday, February 14, 2013 12:10 PM
To: Luis Herrera
Cc: SOTF; Almer Castillo; sue.a.blackman@sfgov.org; SFCityAtty_Threet Jerry; James Chaffee; Peter Warfield
Subject: Fw: Audiovisual access at Library Commission meetings

Mr. Herrera,

It has been a month since my original request. Despite your commitment to "look into it," I've heard nothing since! And, obviously another Library Commission meeting has come and gone, with another just a week away, and members of the public have continued to be denied "access to the graphics" given to those of which you approve.

Ray W. Hartz, Jr.
Director San Francisco Open Government

----- Forwarded Message -----

From: Ray Hartz Jr <rwhartzjr@sbcglobal.net>
To: Luis Herrera <lherrera@sfpl.org>
Cc: "sue.a.blackman@sfgov.org" <sue.a.blackman@sfgov.org>; SOTF <sotf@sfgov.org>; James Chaffee <chaffeej@pacbell.net>; Peter Warfield <libraryusers2004@yahoo.com>; Jack Song <Jack.Song@sfgov.org>
Sent: Tue, January 29, 2013 8:43:57 AM
Subject: Re: Audiovisual access at Library Commission meetings

Mr. Herrera,

With the next Library Commission meeting on February 7th, I would like to know if there has been progress in your efforts to determine whether the public will be granted "equal access" to the audiovisual facilities provided to persons/organizations of whom the Library and Library Commission approve?

The facilities in the Koret Auditorium seem quite extensive! I'm not certain that it should be such a complicated arrangement that it would take much in effort and/or resources to provide the access to members of the public which is already provided to groups whose opinions you wish presented. Why is it that those who have "dissenting opinions" are denied the same level of assistance?

If groups like The Friends and the Civic Center Community Benefit District can provide you with materials to be shown, maybe members of the Public can submit audiovisual aids in the same manner, so that they can be included in the same way? Perhaps it comes down to the fact that you "approve" of their input and "disapprove" ours?

The presentations by "outside groups" are most often submitted as Microsoft PowerPoint documents. Perhaps if I submit my AV aids in the same fashion, not only can they be utilized in the meeting, but the Library Commission can include them in the public information packets sent to interested persons? If you can do it for those you like, public policy dictates that "equal access" be provided even to those of whom you disapprove, unless it is your intent to continue to "abridge public criticism of the policy, procedures, programs or services of the City, or of any other aspect of its proposals or activities, or of the acts or omission of the body, on the basis that the performance of one or more public employees is implicated..." This would, of course be a violation of Sec 67.15 Public Testimony of the Sunshine Ordinance.

Sincerely,

Ray W. Hartz, Jr.

Director, San Francisco Open Government

From: Ray Hartz Jr <rwartzjr@sbcglobal.net>
To: Luis Herrera <lherrera@sfgov.org>
Cc: "sue a blackman@sfgov.org" <sue.a.blackman@sfgov.org>; SOTF <sotf@sfgov.org>; James Chaffee <jchaffee@pacbell.net>; Peter Warfield <libraryusers2004@yahoo.com>; Jack Song <Jack.Song@sfgov.org>
Sent: Mon, January 14, 2013 12:30:16 PM
Subject: Audiovisual access at Library Commission meetings

Mr. Herrera,

I would request that arrangements be made to allow members of the public the ability to use audiovisual

Ausberry, Andrea

From: Ray Hartz Jr [rwhartzjr@sbcglobal.net]
Sent: Thursday, March 14, 2013 6:17 AM
To: SOTF
Cc: Threet, Jerry
Subject: Fw: Audiovisual access at Library Commission meetings - reply - reply
Attachments: [Untitled].pdf

Dear Ms. Ausberry,

Please add this email chain, and the attached response, to the file for complaint #13013, Ray Hartz v. Luis Herrera. It contains the original request, subsequent correspondence, and the final reply to my request to the City Librarian, Luis Herrera.

Thank you,

Ray W. Hartz, Jr.
Director, San Francisco Open Government

----- Forwarded Message -----

From: Luis Herrera <lherrera@sfpl.org>
To: Ray Hartz Jr <rwhartzjr@sbcglobal.net>
Cc: SOTF <sotf@sfgov.org>; Almer Castillo <acastillo@sfpl.org>; "sue.a.blackman@sfgov.org" <sue.a.blackman@sfgov.org>; SFCityAtty_Threet Jerry <Jerry.Threet@sfgov.org>; James Chaffee <chaffeej@pacbell.net>; Peter Warfield <libraryusers2004@yahoo.com>; "ethics.commission@sfgov.org" <ethics.commission@sfgov.org>; "john.st.croix@sfgov.org" <john.st.croix@sfgov.org>
Sent: Wed, March 6, 2013 4:41:01 PM
Subject: RE: Audiovisual access at Library Commission meetings - reply - reply

Mr. Hartz,

Please see attached response regarding your request for audiovisual access at Library Commission meetings.

Luis Herrera, City Librarian

From: Ray Hartz Jr [mailto:rwhartzjr@sbcglobal.net]
Sent: Thursday, February 21, 2013 8:38 PM
To: Luis Herrera
Cc: SOTF; Almer Castillo; sue.a.blackman@sfgov.org; SFCityAtty_Threet Jerry; James Chaffee; Peter Warfield; ethics.commission@sfgov.org; john.st.croix@sfgov.org
Subject: Re: Audiovisual access at Library Commission meetings - reply

Mr. Herrera,

I have made it very, very clear that whatever process you use to incorporate the graphics of those of which you approve (The Friends, the Community Benefit District, etc.) is something I can work with. If they send you Microsoft Powerpoint documents by email to include them in the projected images, I can do the same. I'm not asking for special changes, just the ability to access the graphics in the same way you allow other to. You seem to want to make this a very complicated request, when it's something you

do (and have been doing) for people at almost every meeting of the Library Commission. You simply want to deny the same access to me and others because you don't like what we say! That is suppressing dissenting opinion, which is forbidden under both the Sunshine Ordinance and the Brown Act.

Ray W. Hartz, Jr.
Director, San Francisco Open Government

From: Luis Herrera <lherrera@sfp.org>
To: Ray Hartz Jr <rwhartzjr@sbcglobal.net>
Cc: SOTF <sotf@sfgov.org>; Almer Castillo <acastillo@sfp.org>; "sue a blackman@sfgov.org" <sue.a.blackman@sfgov.org>; SFCityAtty_Threet Jerry <Jerry.Threet@sfgov.org>; James Chaffee <chaffeej@pacbell.net>; Peter Warfield <libraryus2004@yahoo.com>
Sent: Thu, February 21, 2013 2:32:41 PM
Subject: RE: Audiovisual access at Library Commission meetings - reply

Mr. Hartz,

Staff is continuing to look into the feasibility of making the necessary changes in the media set up in the Library's Koret Auditorium set up in order to accommodate your request to allow for audio visual presentations from the public. I will provide a response to your request as soon as I have the information.

Thank you,

Luis

*Luis Herrera
City Librarian
San Francisco Public Library
100 Larkin Street, Room 600
San Francisco, CA 94102
415-557-4232 - Office
415-557-4239 - Fax
lherrera@sfp.org*

From: Ray Hartz Jr (<mailto:rwhartzjr@sbcglobal.net>)
Sent: Thursday, February 14, 2013 12:10 PM
To: Luis Herrera
Cc: SOTF; Almer Castillo; sue.a.blackman@sfgov.org; SFCityAtty_Threet Jerry; James Chaffee; Peter Warfield
Subject: Fw: Audiovisual access at Library Commission meetings

Mr. Herrera,

It has been a month since my original request. Despite your commitment to "look into it," I've heard nothing since! And, obviously another Library Commission meeting has come and gone, with another just a week away, and members of the public have continued to be denied "access to the graphics" given to those of which you approve.

Ray W. Hartz, Jr.
Director San Francisco Open Government

----- Forwarded Message -----

From: Ray Hartz Jr <rhartzjr@sbcglobal.net>

To: Luis Herrera <lherrera@sfp.org>

Cc: "sue.a.blackman@sfgov.org" <sue.a.blackman@sfgov.org>; SOTF <sotf@sfgov.org>; James Chaffee <chaffeej@pacbell.net>;

Peter Warfield <libraryusers2004@yahoo.com>; Jack Song <Jack.Song@sfgov.org>

Sent: Tue, January 29, 2013 8:43:57 AM

Subject: Re: Audiovisual access at Library Commission meetings

Mr. Herrera,

With the next Library Commission meeting on February 7th, I would like to know if there has been progress in your efforts to determine whether the public will be granted "equal access" to the audiovisual facilities provided to persons/organizations of whom the Library and Library Commission approve?

The facilities in the Koret Auditorium seem quite extensive! I'm not certain that it should be such a complicated arrangement that it would take much in effort and/or resources to provide the access to members of the public which is already provided to groups whose opinions you wish presented. Why is it that those who have "dissenting opinions" are denied the same level of assistance?

If groups like The Friends and the Civic Center Community Benefit District can provide you with materials to be shown, maybe members of the Public can submit audiovisual aids in the same manner, so that they can be included in the same way? Perhaps it comes down to the fact that you "approve" of their input and "disapprove" ours?

The presentations by "outside groups" are most often submitted as Microsoft PowerPoint documents. Perhaps if I submit my AV aids in the same fashion, not only can they be utilized in the meeting, but the Library Commission can include them in the public information packets sent to interested persons? If you can do it for those you like, public policy dictates that "equal access" be provided even to those of whom you disapprove, unless it is your intent to continue to "abridge public criticism of the policy, procedures, programs or services of the City, or of any other aspect of its proposals or activities, or of the acts or omission of the body, on the basis that the performance of one or more public employees is implicated...." This would, of course be a violation of Sec 67.15 Public Testimony of the Sunshine Ordinance.

Sincerely,

Ray W. Hartz, Jr.

Director, San Francisco Open Government

From: Ray Hartz Jr <rhartzjr@sbcglobal.net>

To: Luis Herrera <lherrera@sfp.org>

Cc: "sue.a.blackman@sfgov.org" <sue.a.blackman@sfgov.org>; SOTF <sotf@sfgov.org>; James Chaffee <chaffeej@pacbell.net>;

Peter Warfield <libraryusers2004@yahoo.com>; Jack Song <Jack.Song@sfgov.org>

Sent: Mon, January 14, 2013 12:30:16 PM
Subject: Audiovisual access at Library Commission meetings

Mr. Herrera,

I would request that arrangements be made to allow members of the public the ability to use audiovisual aids to support their public comments.

In the Sunshine Ordinance, under section 67.15 PUBLIC TESTIMONY, section (d) "A policy body shall not abridge or prohibit public criticism of the policy, procedures, programs or services of the City..."

While the Library and the Library Commission allow use of audiovisual equipment to groups and persons of which you "approve," you have continued to deny access to those who have "critical comments." There is a well established animosity toward certain members of the public who have "critical comment." The President of the Library Commission has been found to have illegally abridged public comment by the Sunshine Ordinance Task Force. She was subsequently found by the San Francisco Ethics Commission to have engaged in unacceptable behavior in this regard and recommended for removal.

I, and other members of the public, have had public comment censored and excluded from the official record of public meetings. It has only been through a long and drawn-out process that my public testimony has been accurately represented in the official record, by inclusion of my submitted 150 word summaries. You have, in fact, continued to treat other members of the public in ways that essentially censor their public comments.

You, have been found to have withheld public records, which you knew were disclosable. This matter has been referred to the Ethics Commission, and, I look forward to having the opportunity to present my case there and hear your response. Although, I have to admit, that I believe you will send Ms. Blackman to try and justify your actions!

All other City boards and commission, in whose meetings audiovisual aids are used, provide access to the public to that equipment. Although the facilities at the Library are available, you only deny them to members of the public who are "critical" of the operations of the Library and/or Library Commission. It is my contention that this is done to limit the ability of members of the public to make effective public comment, and, as such, abridges public criticism.

Sincerely,

Ray W. Hartz, Jr.
Director, San Francisco Open Government

Official SFPL Use Only

Official SFPL use only

Official SFPL Use Only

Official SFPL use only

Ausberry, Andrea

From: Ray Hartz Jr [rwhartzjr@sbcglobal.net]
Sent: Wednesday, June 26, 2013 3:37 PM
To: SOTF
Subject: Fw: Audiovisual access at Library Commission meetings - reply - reply
Attachments: [Untitled].pdf

Dear Ms. Ausberry,

Please include the following email chain in the file for Case #13013, Ray Hartz v Luis Herrera, City Librarian.

I would like the Task Force members to note that I made it clear that I was not expecting special treatment, but was expecting equal treatment.

I offered to provide documents in Microsoft PowerPoint, which is what I believe all of their "invited" participants use, and that option was ignored in his response.

Mr. Herrera wants to make this seem like an impossible request by claiming a need for huge expenditures, which is not the case!

He only wants to deny access based upon "viewpoint discrimination," allowing those he invites (read approves) access and denying the same to those who chose to attend (read disapproves.)

This is not only a clear violation of the Sunshine Ordinance, but I believe, the Brown Act.

Mr. Herrera has already been found in violation for withholding public records by the Task Force and referred to the Board of Supervisors. This is truly a "pattern of behavior" designed to censor and/or abridge public comment!

Sincerely,

Ray W. Hartz, Jr.
Director, San Francisco Open Government

----- Forwarded Message -----

From: Luis Herrera <lhererra@sfpl.org>
To: Ray Hartz Jr <rwhartzjr@sbcglobal.net>
Cc: SOTF <sotf@sfgov.org>; Almer Castillo <acastillo@sfpl.org>; "sue.a.blackman@sfgov.org" <sue.a.blackman@sfgov.org>; SFCityAtty_Threet Jerry <Jerry.Threet@sfgov.org>; James Chaffee <chaffeej@pacbell.net>; Peter Warfield <libraryusers2004@yahoo.com>; "ethics.commission@sfgov.org" <ethics.commission@sfgov.org>; "john.st.croix@sfgov.org" <john.st.croix@sfgov.org>
Sent: Wednesday, March 6, 2013 4:40 PM
Subject: RE: Audiovisual access at Library Commission meetings - reply - reply

Mr. Hartz,

Please see attached response regarding your request for audiovisual access at Library Commission meetings.

Luis Herrera, City Librarian

From: Ray Hartz Jr [mailto:rwartzjr@sbcglobal.net]
Sent: Thursday, February 21, 2013 8:38 PM
To: Luis Herrera
Cc: SOTF; Almer Castillo; sue.a.blackman@sfgov.org; SFCityAtty_Threet Jerry; James Chaffee; Peter Warfield; ethics.commission@sfgov.org; john.st.croix@sfgov.org
Subject: Re: Audiovisual access at Library Commission meetings - reply

Mr. Herrera,

I have made it very, very clear that whatever process you use to incorporate the graphics of those of which you approve (The Friends, the Community Benefit District, etc.) is something I can work with. If they send you Microsoft Powerpoint documents by email to include them in the projected images, I can do the same. I'm not asking for special changes, just the ability to access the graphics in the same way you allow other to. You seem to want to make this a very complicated request, when it's something you do (and have been doing) for people at almost every meeting of the Library Commission. You simply want to deny the same access to me and others because you don't like what we say! That is suppressing dissenting opinion, which is forbidden under both the Sunshine Ordinance and the Brown Act.

Ray W. Hartz, Jr.
Director, San Francisco Open Government

From: Luis Herrera <lherrera@sfpl.org>
To: Ray Hartz Jr <rwartzjr@sbcglobal.net>
Cc: SOTF <sotf@sfgov.org>; Almer Castillo <acastillo@sfpl.org>; "sue.a.blackman@sfgov.org" <sue.a.blackman@sfgov.org>; SFCityAtty_Threet Jerry <Jerry.Threet@sfgov.org>; James Chaffee <chaffeej@pacbell.net>; Peter Warfield <libraryusers2004@yahoo.com>
Sent: Thu, February 21, 2013 2:32:41 PM
Subject: RE: Audiovisual access at Library Commission meetings - reply

Mr. Hartz,

Staff is continuing to look into the feasibility of making the necessary changes in the media set up in the Library's Koret Auditorium set up in order to accommodate your request to allow for audio visual presentations from the public. I will provide a response to your request as soon as I have the information.

Thank you,

Luis

*Luis Herrera
City Librarian
San Francisco Public Library
100 Larkin Street, Room 600
San Francisco, CA 94102
415-557-4232 - Office
415-557-4239 - Fax
lherrera@sfpl.org*

From: Ray Hartz Jr [mailto:rwartzjr@sbcglobal.net]
Sent: Thursday, February 14, 2013 12:10 PM
To: Luis Herrera

Cc: SOTF; Almer Castillo; sue.a.blackman@sfgov.org; SFCityAtty_Threet Jerry; James Cnaffee; Peter Warfield
Subject: Fw: Audiovisual access at Library Commission meetings

Mr. Herrera,

It has been a month since my original request. Despite your commitment to "look into it," I've heard nothing since! And, obviously another Library Commission meeting has come and gone, with another just a week away, and members of the public have continued to be denied "access to the graphics" given to those of which you approve.

Ray W. Hartz, Jr.
Director San Francisco Open Government

--- Forwarded Message ---

From: Ray Hartz Jr <rwartzjr@sbcglobal.net>
To: Luis Herrera <lherrera@sfpj.org>
Cc: "sue.a.blackman@sfgov.org" <sue.a.blackman@sfgov.org>; SOTF <sotf@sfgov.org>; James Chaffee <chaffeej@pacbell.net>; Peter Warfield <libraryusers2004@yahoo.com>; Jack Song <Jack.Song@sfgov.org>
Sent: Tue, January 29, 2013 8:43:57 AM
Subject: Re: Audiovisual access at Library Commission meetings

Mr. Herrera,

With the next Library Commission meeting on February 7th, I would like to know if there has been progress in your efforts to determine whether the public will be granted "equal access" to the audiovisual facilities provided to persons/organizations of whom the Library and Library Commission approve?

The facilities in the Koret Auditorium seem quite extensive! I'm not certain that it should be such a complicated arrangement that it would take much in effort and/or resources to provide the access to members of the public which is already provided to groups whose opinions you wish presented. **Why is it that those who have "dissenting opinions" are denied the same level of assistance?**

If groups like The Friends and the Civic Center Community Benefit District can provide you with materials to be shown, maybe members of the Public can submit audiovisual aids in the same manner, so that they can be included in the same way? Perhaps it comes down to the fact that you "approve" of their input and "disapprove" ours?

The presentations by "outside groups" are most often submitted as Microsoft PowerPoint documents. Perhaps if I submit my AV aids in the same fashion, not only can they be utilized in the meeting, but the Library Commission can include them in the public information packets sent to interested persons? If you can do it for those you like, public policy dictates that "equal access" be provided even to those of whom you disapprove, unless it is your intent to continue to **"abridge public criticism of the policy, procedures, programs or services of the City, or of any other aspect of its proposals or activities, or of the acts or omission of the body, on the basis that the performance of one or more public employees is implicated..."** This would, of course be a violation of Sec 67.15 Public Testimony of the Sunshine Ordinance.

Sincerely,

Ray W. Hartz, Jr.
Director, San Francisco Open Government

From: Ray Hartz Jr <rwartzjr@sbcglobal.net>
To: Luis Herrera <lherrera@sfpl.org>
Cc: "sue.a.blackman@sfgov.org" <sue.a.blackman@sfgov.org>; SOTF <sotf@sfgov.org>; James Chaffee <chaffeej@pacbell.net>; Peter Warfield <libraryusers2004@yahoo.com>; Jack Song <Jack.Song@sfgov.org>
Sent: Mon, January 14, 2013 12:30:16 PM
Subject: Audiovisual access at Library Commission meetings

Mr. Herrera,

I would request that arrangements be made to allow members of the public the ability to use audiovisual aids to support their public comments.

In the Sunshine Ordinance, under section 67.15 PUBLIC TESTIMONY, section (d) "A policy body shall not abridge or prohibit public criticism of the policy, procedures, programs or services of the City..."

While the Library and the Library Commission allow use of audiovisual equipment to groups and persons of which you "approve," you have continued to deny access to those who have "critical comments." There is a well established animosity toward certain members of the public who have "critical comment." The President of the Library Commission has been found to have illegally abridged public comment by the Sunshine Ordinance Task Force. She was subsequently found by the San Francisco Ethics Commission to have engaged in unacceptable behavior in this regard and recommended for removal.

I, and other members of the public, have had public comment censored and excluded from the official record of public meetings. It has only been through a long and drawn-out process that my public testimony has been accurately represented in the official record, by inclusion of my submitted 150 word summaries. You have, in fact, continued to treat other members of the public in ways that essentially censor their public comments.

You, have been found to have withheld public records, which you knew were disclosable. This matter has been referred to the Ethics Commission, and, I look forward to having the opportunity to present my case there and hear your response. Although, I have to admit, that I believe you will send Ms. Blackman to try and justify your actions!

All other City boards and commission, in whose meetings audiovisual aids are used, provide access to the public to that equipment. Although the facilities at the Library are available, you only deny them to members of the public who are "critical" of the operations of the Library and/or Library Commission. It is my contention that this is done to limit the ability of members of the public to make effective public comment, and, as such, abridges public criticism.

Sincerely,

Ray W. Hartz, Jr.
Director, San Francisco Open Government

Official SFPL Use Only

Official SFPL use only

Official SFPL Use Only

Official SFPL use only



San Francisco Public Library

March 5, 2013

Mr. Ray Hartz,
839 Leavenworth Street, Apt. 304
San Francisco, CA 94109-6131
Via email: rwhartz@zscglobal.net

Dear Mr. Hartz,


On January 14, 2013, you requested that the San Francisco Public Library (SFPL) allow members of the public to use audiovisual aids to support their public comments. You assert that SFPL denies the public access to the audiovisual aids in an effort to abridge public criticism. You also assert that such action violates San Francisco Administrative Code Section 67.15, which prohibits a policy body from "abridg[ing] or prohibi[t]ing public criticism of the policy, procedures, programs or services of the City."

I respectfully disagree. The Commission does not discriminate on the basis of viewpoint in allowing members to exercise their right to address public comments to the Commission. Further, neither the Brown Act nor the Sunshine Ordinance gives members of the public the right of access during public comment to SFPL audiovisual technology. In particular, Administrative Code Section 67.15, which specifically addresses the right to public comment in San Francisco, does not prescribe the method, means, or mode of technology that SFPL must allow the public to use during public comment.

Library staff have explored options to accommodate your request. We looked at providing the public with a basic transparency device that uses an overhead projector. However, this option was not viable as the projector could not project the image on the auditorium stage screen to allow the public and commissioners to view. The only option available for audio visual presentations at the SFPL Commission meetings would require reconfiguring the department's information technology set up to allow for the public to download their presentations from a laptop from the public lectern. This option would require the library department to incur additional expense and resources. Specifically, we would need to enlist the services of engineering staff and a construction contractor to modify the cable set up, including running cables under the stage to the public lectern, where members of the public would place a laptop or use a jump drive to connect to the stage podium and projection room. Additional equipment costs to provide the interface for the laptop and modifying the lectern to accommodate the equipment and ensure proper ADA set up would also be necessary. Preliminary cost estimates from our facilities department working with the Department of Public Works places that cost at a minimum of \$40,000. The Library Department does not have the resources to incur these additional costs.

Currently, the Commission allows only SFPL staff and individuals or organizations invited to make presentations to the Commission to use the Library's computers to connect to its audio visual equipment. For example, the architects as part of the Bond Managers report, other City departments or the Friends of the Library may have, on occasion, connected their laptops or preloaded materials to SFPL audiovisual equipment for presentations that the Commission has invited them to make for items that the Commission has placed on its agenda. However, SFPL staff have expended resources to load the materials into the Library's information processing system ahead of time. Where the Commission invites private parties to make presentations, SFPL expends its resources as necessary to effect those presentations. Otherwise, the department uniformly declines to allow members of the public, without regard to their viewpoint, to connect their laptops or external devices to the department's audiovisual facilities because of the additional expense and resources discussed above.

Sincerely,


Luis Herrera
City Librarian



SUNSHINE ORDINANCE TASK FORCE CITY AND COUNTY OF SAN FRANCISCO DRAFT MINUTES

Hearing Room 406
City Hall, 1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

July 9, 2013 – 4:30 PM

Special Meeting

Members: Kitt Grant (Chair), Louise Fischer (Vice-Chair),
Richard Knee, Allyson Washburn, David Pilpel,
David Sims, Todd David, Chris Hyland, Bruce Oka

1. **Call to Order, Roll Call, and Agenda Changes.**

The meeting was called to order at 4:38 p.m. There was a quorum.

Chair Grant announced a request for File No. 13012 to be continued by the Complainant.

Member Washburn, seconded by Member Knee moved to accept the Complainant's request for continuance; CONTINUE file No. 13012 to August 7, 2013.

There were no speakers. **The motion PASSED without objection.**

2. **File No. 12007:** The Education, Outreach and Training Committee has referred File No. 12007, the Library Users Association against Supervisor Campos for responding late to an immediate disclosure request and redacting information from Bernal Heights Branch Library Mural related documents inappropriately.

Member Knee, seconded by Member David moved to CONTINUE the matter to August 7, 2013.

Speakers: Ray Hartz expressed that Task Force members should be informed of all supporting documents in order to make proper determinations; Allen Grossman expressed support of the motion.

The motion PASSED by the following vote:

Ayes: 9 - Knee, Washburn, Pilpel, Sims, Hyland, Oka, David, Fischer, Grant

File No. 13005: Complaint filed by Paula Datesh against the Arts Commission for allegedly failing to respond to an Immediate Disclosure Request for records pertaining to the operations of the Arts Commission.

Member David, seconded by Member Knee, moved to find jurisdiction.

There were no speakers. The motion PASSED without objection.

Paula Datesh (Complainant) provided an overview of the complaint and requested the Task Force to find violations. There were no speakers who offered facts and evidence in support of Complainant. Howard Lazar, Arts Commission (Respondent), provided an overview of the Arts Commission's defense and requested the Task Force to dismiss the complaint. There were no speakers who offered facts and evidence in support of Respondent. A question and answer period followed. Complainant and Respondent responded to questions raised throughout the discussion. Respondent provided a rebuttal and stating they were not in violation of the ordinance. Complainant provided a rebuttal and again requested the Task Force find violations.

Member Pilpel, seconded by Member Knee, moved to find the Arts Commission in violation of S.O. Secs. 67.25(a) for failure to respond in a timely matter; 67.21(e) for failure to comply with the records request; referral to Education, Outreach and Training Committee.

Speakers: Diane expressed support of the complainant.

The motion PASSED by the following vote:

Ayes: 9 - Knee, Washburn, Pilpel, Sims, David Hyland, Oka, Fischer, Grant

Recess 6:25 – 6:37 p.m.

4. Public Comment

Speakers: Ray Hartz expressed concern with the bias the Chair of the Education, Outreach and Training Committee displays in favor of City agencies; Allen Grossman expressed concern with the required six vote of the Sunshine Ordinance Bylaws for the approval of all substantive matters; Paula Datesh announced her street artist certification was revoked; Peter Warfield expressed concern with the vacancies of the Task Force; Diane expressed concern with the Office of Citizen Compliant not responding to records requested.

*The following information is provided by a speaker, pursuant to Administrative Code Section 67.16. The content is neither generated by, nor subject to approval or verification of accuracy by, the Sunshine Ordinance Task Force.

Allen Grossman submitted the following additional information for Public Comment as follows:

Agenda Item (4) Public Comment (150 words):

Allen Grossman's 150 Word Summary for inclusion in body of SOTF – JULY 9, 2013 Meeting Minutes

Yesterday, the California Supreme Court decided a CPRA case relevant to this body's adoption last year of the six vote "minimum" rule. The Court placed considerable weight on Prop 59's statutory requirement that laws related to public access must be broadly construed.

This decision is significant not because the two Deputy City Attorneys who advised this body on the six vote rule did not know that Prop 59 requirement, but because they never mentioned it in their legal Memoranda construing the City Charter provision involved. This body voted to adopt the six-vote minimum rule on the advice of those two lawyers.

As a result of their lack of professionalism and divided loyalty, those two Deputy City Attorneys deprived this body and the complainants who seek its help of the public's constitutionally protected right of access, which has been and will continue to be compromised to their detriment.

5. **File No. 13011:** Complaint filed by Paula Datesh against the Arts Commission for allegedly not providing documents relating to Evelyn Russell, former Arts Commission Secretary.

Member Knee, seconded by Member Oka, moved to find jurisdiction.

There were no speakers. **The motion PASSED without objection.**

Paula Datesh (Complainant) provided an overview of the complaint and requested the Task Force to find violations. There were no speakers who offered facts and evidence in support of Complainant. Howard Lazar, Arts Commission (Respondent), provided an overview of the Arts Commission's defense and requested the Task Force to dismiss the complaint. There were no speakers who offered facts and evidence in support of Respondent. A question and answer period followed; the Task Force requested, the Complainant provide her initial request made in March for the Task Force to make a determination. Complainant and Respondent responded to questions raised throughout the discussion. Respondent provided a rebuttal and stating they were not in violation of the ordinance. Complainant provided a rebuttal and again requested the Task Force find violations.

Member Knee, seconded by Member Oka moved to CONTINUE the matter to August 7, 2013.

Speakers: None.

The motion PASSED by the following vote:

Ayes: 9 - Knee, Washburn, Pilpel, Sims, David Hyland, Oka, Fischer, Grant

6. **File No. 13012:** Complaint filed by Glad Tidings Church against the Office of the Assessor-Recorder for allegedly failing to provide complete records associated with Glad Tidings Church and San Francisco Teen Challenge.

Member Washburn, seconded by Member Knee moved to accept the Complainant's request for continuance; CONTINUE file No. 13012 to August 7, 2013.

There were no speakers. The motion PASSED without objection.

7. **File No. 13013:** Complaint filed by Ray Hartz Jr., against Luis Herrera, City Librarian for allegedly abridging public comment by allowing selective accessibility of library audio visual equipment.

Member Washburn, seconded by Member Fischer, moved to find jurisdiction.

There were no speakers. The motion PASSED without objection.

Ray Hartz, Jr. (Complainant) provided an overview of the complaint and requested the Task Force to find violations. There were no speakers who offered facts and evidence in support of Complainant. Sue Blackman, Library Commission Secretary and Roberto Lombardi, Library Logistics (Respondents), provided an overview of the City Librarian's defense and requested the Task Force to dismiss the complaint. There were no speakers who offered facts and evidence in support of Respondent. A question and answer period followed. Complainant and Respondent responded to questions raised throughout the discussion. Respondents waived rebuttal. Complainant provided a rebuttal and again requested the Task Force find violations.

Member Sims, seconded by Member Oka moved to find the Library in violation of S.O. Sec. 67.15(a)(d) for abridging public comment by not providing equal access of audio visual equipment to invited parties and the public; referral to the Compliance and Amendments Committee.

Speakers: Male Speaker expressed opposition to the Library denying equal access to equipment; Paula Datesh expressed support of the motion; Diane expressed appreciation of the Complainant bringing this issue to the Task Force; Peter Warfield stated the Library has the budget to accommodate the public's use of audio visual equipment.

The motion PASSED by the following vote:

Ayes: 8 - Knee, Washburn, Sims, David, Hyland, Oka, Fischer, Grant

Noes: 1 - Pilpel

8. **File No. 13014:** Complaint filed by Ray Hartz Jr. against Ben Rosenfield, City Controller for allegedly failing to provide filings by the City Librarian, Luis Herrera of gifts from The Friends of the San Francisco Public Library.

Member Pilpel, seconded by Member Knee, moved to find jurisdiction.

There were no speakers. The motion PASSED without objection.

Ray Hartz, Jr. (Complainant) provided an overview of the complaint and requested the Task Force to find violations. There were no speakers who offered facts and evidence in support of Complainant. Monique Zmuda, Deputy Controller (Respondent), provided an overview of the City Controller's defense and requested the Task Force to dismiss the complaint. There were no speakers who offered facts and evidence in support of Respondent. A question and answer period followed. Complainant and Respondent responded to questions raised throughout the discussion. Respondent waived rebuttal. Complainant provided a rebuttal and again requested the Task Force find violations.

Member Pilpel, seconded by Member Oka moved to find the City Controller in violation of S.O. Sec. 67.21(b) for failure to comply with request within ten days following receipt of the request; S.O. Sec. 67.25(a) for failure to respond in a timely matter; referral to the Education, Outreach and Training Committee for analysis of the City Controller's processes.

Speakers: None.

The motion PASSED by the following vote:

Ayes: 9 - Knee, Washburn, Pilpel, Sims, David, Hyland, Oka, Fischer, Grant

9:03 - 9:13 pm Recess

(Member Hyland was noted absent at 9:13 p.m.)

9. **File No. 13015:** Complaint filed by William Ledford against the Office of the City Attorney for allegedly failing to process and complete an immediate disclosure request.

Member Knee, seconded by Member David, moved to find jurisdiction.

There were no speakers. **The motion PASSED without objection.**

William Ledford (Complainant) provided an overview of the complaint and requested the Task Force to find violations. There were no speakers who offered facts and evidence in support of Complainant. Jack Song, Deputy Communications Director, Public Information (Respondent), provided an overview of the Office of the City Attorney's defense and requested the Task Force to dismiss the complaint. There were no speakers who offered facts and evidence in support of Respondent. A question and answer period followed. Complainant and Respondent responded to questions raised throughout the discussion. Respondent provided a rebuttal stating the Office of the City Attorney was not in violation of the ordinance. Complainant provided a rebuttal and again requested the Task Force find violations.

Member Washburn, seconded by Member Knee moved to find the City Attorney in violation of S.O. Sec. 67.21(b) for failure to comply with request within ten days following receipt of the request.

Speakers: Ray Hartz expressed the complainant's only option was to go through the City Attorney for the records requested due to litigation; Peter Warfield expressed concern of the City Attorney's claim not to have possession of the records requested by the Complainant.

The motion **FAILED** by the following vote:

Ayes: 1 - Washburn

Noes: 7 - Knee, Pilpel, Sims, David, Oka, Fischer, Grant

Absent: 1 - Hyland

MATTER IS CONCLUDED.

10. Approval of Minutes from the January 16, 2013, Special Meeting.

Member Pilpel, seconded by Member Knee, moved to **CONTINUE** items 10 through 15 to August 7, 2013.

Speaker: Peter Warfield suggested agendizing the minutes first on the agenda.

The motion **PASSED** without objection.

11. Approval of Minutes from the February 6, 2013, Regular Meeting.

Member Pilpel, seconded by Member Knee, moved to **CONTINUE** items 10 through 15 to August 7, 2013.

Speaker: Peter Warfield suggested agendizing the minutes first on the agenda.

The motion **PASSED** without objection.

12. Approval of Minutes from the March 6, 2013, Regular Meeting.

Member Pilpel, seconded by Member Knee, moved to **CONTINUE** items 10 through 15 to August 7, 2013.

Speaker: Peter Warfield suggested agendizing the minutes first on the agenda.

The motion **PASSED** without objection.

13. Approval of Minutes from the April 3, 2013, Regular Meeting.

Member Pilpel, seconded by Member Knee, moved to **CONTINUE** items 10 through 15 to August 7, 2013.

Speaker: Peter Warfield suggested agendizing the minutes first on the agenda.

The motion **PASSED** without objection.

14. Approval of Minutes from the May 1, 2013, Regular Meeting.

Member Pilpel, seconded by Member Knee, moved to CONTINUE items 10 through 15 to August 7, 2013.

Speaker: Peter Warfield suggested agendaizing the minutes first on the agenda.

The motion PASSED without objection.

15. Approval of Minutes from the June 5, 2013, Regular Meeting.

Member Pilpel, seconded by Member Knee, moved to CONTINUE items 10 through 15 to August 7, 2013.

Speaker: Peter Warfield suggested agendaizing the minutes first on the agenda.

The motion PASSED without objection.

16. Report: Compliance and Amendments Committee meeting of June 18, 2013.

Report was given by Member Washburn, Chair of the Compliance and Amendments Committee, on the July 18, 2013 meeting on behalf of the Compliance and Amendments Committee. In partnership the Chairs of the committee and the Task Force will send a letter to the Ethics Commission in regards to File No. 12058, Dominic Maionchi against the Recreation and Parks Department.

Speakers: Ray Hartz expressed support of the letter to Ethics Commission; Peter Warfield expressed support of the letter to Ethics Commission.

17. Report: Education, Outreach and Training Committee meeting of June 25, 2013.

Report was given by Member Pilpel, Chair of the Education, Outreach and Training Committee, on the June 25, 2013, meeting on behalf of the Education, Outreach and Training Committee.

Member Knee expressed disagreement with Chair Pilpel presiding over Complaint No. 12050, Ray Hartz against the Clerk of the Board, with the intention to conclude the matter and not abiding to the Order of Determination of the Task Force.

Member David stated he would recuse himself from all future complaints involving Ray Hartz while Member Pilpel is Chair of the Education, Outreach and Training Committee.

Speakers: Ray Hartz urged the Task Force to listen to the audio of the June 25, 2013, Education, Outreach and Training Committee meeting to hear Chair Pilpel readjudicate complaints and show biased against complainants; Peter Warfield expressed as Chair of

the Education, Outreach and Training Committee and as a member of the Task Force, Member Pilpel is incapable of being impartial.

(Member David was noted absent at 10:53 p.m.)

18. **Administrator's Report.**

Report was given by Andrea Ausberry, Sunshine Ordinance Task Force Administrator, on behalf of the Sunshine Ordinance Task Force Office.

Speakers: None.

19. **Announcements, Comments, Questions, and Future Agenda Items.**

Member Fischer wished Member Oka Happy Birthday.

Speakers: Ray Hartz expressed the consistency of how the title complaints are worded can affect the Task Force's determinations; Peter Warfield expressed concern of which Task Force member will represent the Task Force for Ethic Commission hearings.

20. **ADJOURNMENT**

Member Knee, seconded by Member Pilpel, moved to ADJOURN.

There were no speakers. The motion PASSED without objection.

There being no further business, the Task Force adjourned at 10:57 p.m.

Agenda Item Information

Each item on the agenda may include: 1) Department or Agency cover letter and/or report; 2) Public correspondence; 3) Other explanatory documents. For more information concerning agendas, minutes, and meeting information, such as these documents, please contact the SOTF Clerk, City Hall, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco, CA 94102.

Audio recordings of the meeting of the Sunshine Ordinance Task Force are available at:
<http://www.sfbos.org/index.aspx?page=9811>

For information concerning Sunshine Ordinance Task Force please contact by e-mail sotf@sfgov.org or by calling (415) 554-7724.

Public Comment

Public Comment will be taken before or during the Committee's consideration of each agenda item. Speakers may address the Task Force for up to three minutes on that item. During General Public Comment, members of the public may address the Task Force on matters that are within the Task Force's jurisdiction and are not on the agenda. Any person speaking during a public comment period may supply a brief written summary of their comments, which shall, if no more than 150 words, be included in the official file.

Each member of the public will be allotted the same maximum number of minutes to speak as set by the Chair at the beginning of each item, excluding persons requested by the Task Force to make presentations.

Each member of the public who is unable to attend the public meeting or hearing may submit to the City, by the time the hearing begins, written comments regarding the subject of the meeting or hearing. These comments will be made a part of the official public record.

Hearing Procedures

- | | |
|---|----------------------|
| 1. Complainant presents his/her facts and evidence | 5 minutes |
| Other parties of Complainant present facts and evidence | Up to 3 minutes each |
| 2. City responds | 5 minutes |
| Other parties of City respond | Up to 3 minutes each |
| <i>Above total speaking times for Complainant and City to be the same.</i> | |
| 3. Matter is with the Task Force for discussion and questions. | |
| 4. Respondent and Complainant presents clarification/rebuttal | 3 minutes |
| 5. Matter is with the Task Force for motion and deliberation. | |
| 6. Public comment (Excluding Complainant & City response, witnesses) | Up to 3 minutes each |
| 7. Vote by Task Force (Public comment at discretion of chair on new motion and/or on new motion if vote fails.) | |

Note: Time must be adhered to. If a speaker is interrupted by questions, the interruption does not count against his/her time.

Disability Access

The hearing rooms in City Hall are wheelchair accessible. Assistive listening devices for the hearing rooms are available upon request with the SOTF Clerk. The nearest accessible BART station is Civic Center (Market/Grove/Hyde Streets). Accessible MUNI Metro lines are the F, J, K, L, M, N, T (exit at Civic Center or Van Ness Stations). MUNI bus lines also serving the area are the 5, 6, 9, 19, 21, 47, 49, 711, and 741L. For more information about MUNI accessible services, call (415) 701-4485. There is accessible parking in the vicinity of City Hall at Civic Center Plaza and adjacent to Davies Hall and the War Memorial Complex. Accessible curbside parking is available on Dr. Carlton B. Goodlett Place and Grove Street.

The following services are available on request 48 hours prior to the meeting; except for Monday meetings, for which the deadline shall be 4:00 p.m. of the last business day of the preceding week: For American sign language interpreters or the use of a reader during a meeting, a sound enhancement system, and/or alternative formats of the agenda and minutes, please contact the SOTF Clerk at (415) 554-7724 to make arrangements for the accommodation. Late requests will be honored, if possible.

In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City accommodate these individuals.

Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils, and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code) or to report a violation of the ordinance, contact: Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco, CA 94102; phone (415) 554-7724; fax (415) 554-7854; or email sotf@sfgov.org.

Citizens may obtain a free copy of the Sunshine Ordinance by printing Chapter 67 of the San Francisco Administrative Code on the Internet, at <http://www.sfbos.org/sunshine>.

Cell Phones, Pagers and Similar Sound-Producing Electronic Devices

The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing electronic devices (Chapter 67A of the San Francisco Administrative Code).

Lobbyist Registration and Reporting Requirements

Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Campaign & Governmental Conduct Code §2.100, et. seq] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at: 25 Van Ness Avenue, Suite 220, San Francisco, CA 94102; telephone (415) 581-3100; fax (415) 252-3112; web site www.sfgov.org/ethics



SUNSHINE ORDINANCE TASK FORCE

Compliance and Amendments Committee

CITY AND COUNTY OF SAN FRANCISCO

AGENDA

Hearing Room 408
City Hall, 1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

September 17, 2013 – 4:00 P.M.

Regular Meeting

Members: Allyson Washburn (Chair),
Richard Knee, Kitt Grant

1. **CALL TO ORDER, ROLL CALL, AND AGENDA CHANGES**
2. **Adoption of August 20, 2013, Regular Meeting Minutes.** (Discussion and Action) *(attachment) (approximately 5 minutes)*
3. **File No. 13013:** Hearing on the status of the Order of Determination of Ray Hartz Jr., against Luis Herrera, City Librarian for allegedly abridging public comment by allowing selective accessibility of library audio visual equipment. (Discussion and Action) *(attachment) (approximately 30 minutes)*
4. **Public Comment:** Members of the public may address the Compliance and Amendments Committee on matters that are within Sunshine Ordinance Task Force's jurisdiction but not on today's agenda. (No Action). **Public Comment shall be taken after action is taken on the last hearing item or half an hour after the meeting convenes.**
5. **Administrator's Report.** (Discussion and Action) *(approximately 5 minutes)*
6. **Announcements, Comments, Questions, and Future Agenda Items.** (No Action)
7. **ADJOURNMENT**

Agenda Item Information

Each item on the agenda may include: 1) Department or Agency cover letter and/or report; 2) Public correspondence; 3) Other explanatory documents. For more information concerning agendas, minutes, and meeting information, such as these documents, please contact the SOTF Clerk, City Hall, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco, CA 94102.

Audio recordings of the meeting of the Sunshine Ordinance Task Force are available at:
<http://www.sfbos.org/index.aspx?page=9811>

For information concerning Sunshine Ordinance Task Force please contact by e-mail sotf@sfgov.org or by calling (415) 554-7724.

Public Comment

Public Comment will be taken before or during the Committee's consideration of each agenda item. Speakers may address the Task Force for up to three minutes on that item. During General Public Comment, members of the public may address the Task Force on matters that are within the Task Force's jurisdiction and are not on the agenda. Any person speaking during a public comment period may supply a brief written summary of their comments, which shall, if no more than 150 words, be included in the official file.

Each member of the public will be allotted the same maximum number of minutes to speak as set by the Chair at the beginning of each item, excluding persons requested by the Task Force to make presentations.

Each member of the public who is unable to attend the public meeting or hearing may submit to the City, by the time the hearing begins, written comments regarding the subject of the meeting or hearing. These comments will be made a part of the official public record.

Hearing Procedures

- | | |
|---|----------------------|
| 1. Complainant presents his/her facts and evidence | 5 minutes |
| Other parties of Complainant present facts and evidence | Up to 3 minutes each |
| 2. City responds | 5 minutes |
| Other parties of City respond | Up to 3 minutes each |
| <i>Above total speaking times for Complainant and City to be the same.</i> | |
| 3. Matter is with the Task Force for discussion and questions. | |
| 4. Respondent and Complainant presents clarification/rebuttal | 3 minutes |
| 5. Matter is with the Task Force for motion and deliberation. | |
| 6. Public comment (Excluding Complainant & City response, witnesses) | Up to 3 minutes each |
| 7. Vote by Task Force (Public comment at discretion of chair on new motion and/or on new motion if vote fails.) | |

Note: Time must be adhered to. If a speaker is interrupted by questions, the interruption does not count against his/her time.

Disability Access

The hearing rooms in City Hall are wheelchair accessible. Assistive listening devices for the hearing rooms are available upon request with the SOTF Clerk. The nearest accessible BART station is Civic Center (Market/Grove/Hyde Streets). Accessible MUNI Metro lines are the F, J, K, L, M, N, T (exit at Civic Center or Van Ness Stations). MUNI bus lines also serving the area are the 5, 6, 9, 19, 21, 47, 49, 71, and

71L. For more information about MUNI accessible services, call (415) 701-4485. There is accessible parking in the vicinity of City Hall at Civic Center Plaza and adjacent to Davies Hall and the War Memorial Complex. Accessible curbside parking is available on Dr. Carlton B. Goodlett Place and Grove Street.

The following services are available on request 48 hours prior to the meeting; except for Monday meetings, for which the deadline shall be 4:00 p.m. of the last business day of the preceding week: For American sign language interpreters or the use of a reader during a meeting, a sound enhancement system, and/or alternative formats of the agenda and minutes, please contact the SOTF Clerk at (415) 554-7724 to make arrangements for the accommodation. Late requests will be honored, if possible.

In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City accommodate these individuals.

Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils, and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code) or to report a violation of the ordinance, contact: Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco, CA 94102; phone (415) 554-7724; fax (415) 554-7854; or email sotf@sfgov.org.

Citizens may obtain a free copy of the Sunshine Ordinance by printing Chapter 67 of the San Francisco Administrative Code on the Internet, at <http://www.sfbos.org/sunshine>.

Cell Phones, Pagers and Similar Sound-Producing Electronic Devices

The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing electronic devices (Chapter 67A of the San Francisco Administrative Code).

Lobbyist Registration and Reporting Requirements

Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Campaign & Governmental Conduct Code §2.100, et. seq] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at: 25 Van Ness Avenue, Suite 220, San Francisco, CA 94102; telephone (415) 581-3100; fax (415) 252-3112; web site www.sfgov.org/ethics.

File No. 13013

SOTF Item No. 3
CAC Item No. _____

SUNSHINE ORDINANCE TASK FORCE
AGENDA PACKET CONTENTS LIST

Sunshine Ordinance Task Force (SOTF)

Date: _____

Compliance and Amendments Committee (CAC) Date: September 17, 2013

CAC/SOTF

<input checked="" type="checkbox"/>	<input type="checkbox"/>	Memorandum
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Order of Determination
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Complaint and Supporting documents
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Respondent's Response
<input type="checkbox"/>	<input type="checkbox"/>	Minutes
<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	

OTHER

<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____

Completed by: V Young Date: 9/12/13
Completed by: _____ Date: _____

*An asterisked item represents the cover sheet to a document that exceeds 75 pages.
The complete document is in the file.



ORDER OF DETERMINATION

August 19, 2013

DATE THE DECISION ISSUED

July 9, 2013

RAY HARTZ VS. CITY LIBRARIAN LUIS HERRERA (13013)

FACTS OF THE CASE

Ray Hartz ("Complainant") alleges that the City Librarian, Luis Herrera (the "Librarian") violated the Ordinance by failing to provide equal access to members of the public to Library audiovisual equipment for use during public comment at Library Commission meetings, thereby abridging their speech.

COMPLAINT FILED

On March 4, 2013, Complainant filed a complaint with the Task Force alleging a violation of Section 67.15 of the Ordinance.

HEARING ON THE COMPLAINT

On July 9, 2013, Complainant, Mr. Hartz appeared before the Task Force and presented his claim. Respondents Sue Blackman, Library Commission Secretary and Roberto Lombardi, Library Logistics presented the Library's defense.

The issue in the case is whether the Agency violated Section 67.15 of the Ordinance.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the testimony and evidence presented the Task Force finds the testimony of Complainant Mr. Hartz to be persuasive and finds that Sections 67.15(a) and 67.15(d) to be applicable in this case. The Task Force does not find testimony provided by the Library persuasive to this case.

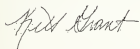
DECISION AND ORDER OF DETERMINATION

The Task Force finds that the Library Commission violated Section 67.15(a) and 67.15(b) of the Sunshine Ordinance for abridging public comment by not providing equal access to audio visual equipment by invited parties and the public. The Library Commission shall provide equal access to its audio visual equipment and appear before the Compliance and Amendments Committee on September 17, 2013 for a hearing on its compliance with this Order.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on July 9, 2013 by the following vote: (Sims/Oka)

Ayes: Kneel, Washburn, Sims, David, Hyland, Oka, Fischer, Grant

Noes: Pilpel



Kitt Grant, Chair
Sunshine Ordinance Task Force

c: Jerry Threet, Deputy City Attorney
Ray Hartz, Jr., Complaint
Sue Blackman, Library Commission Secretary, Respondent
Roberto Lombardi, Library Logistics, Respondent

CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

JERRY THREET
Deputy City Attorney

DIRECT DIAL: (415) 554-3914
E-MAIL: jerry.threet@sfgov.org

MEMORANDUM

July 5, 2013

RAY HARTZ VS. CITY LIBRARIAN LUIS HERRERA (13013)

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING:

Complainant Ray Hartz ("Complainant") alleges that the City Librarian, Luis Herrera (the "Librarian") violated the Ordinance by failing to provide equal access to members of the public to Library audiovisual equipment for use during public comment at Library Commission meetings, thereby abridging their speech.

COMPLAINANT FILES COMPLAINT:

On March 4, 2013, Complainant filed a complaint with the Task Force alleging a violation of Section 67.15 of the Ordinance.

JURISDICTION

The Library clearly is a City Department and the Library Commission is a charter policy body. The Task Force therefore has jurisdiction to hear a public meetings complaint.

APPLICABLE STATUTORY SECTION(S):

- Section 67.15 governs the public comment at meetings of policy bodies.

APPLICABLE CASE LAW:

None.

ISSUES TO BE DETERMINED

Complainant: Complainant alleges that the Librarian violated the Ordinance by failing to provide equal access to members of the public to Library audiovisual equipment for use during public comment at Library Commission meetings, thereby abridging their speech. Complainant provides copies of emails to support his complaint.

Those emails show that on January 14, 2013, Complainant requested from the Librarian public access to Library audiovisual equipment for use during public comment at Commission meetings, noting that such equipment was used by groups that Complainant described as being approved by the Library. The 1/14/13 email also argued that denying access to the public to such

Memorandum

DATE: July 5, 2013
PAGE: 2
RE: Hartz v. Librarian (13013)

equipment would violated Section 67.15(d) of the Ordinance by abridging public comment. Complainant submitted another email with similar requests and arguments to the Librarian from January 24, 2013.

Complainant submitted a third email to Herrera dated February 14, 2013 in which it was noted that the Librarian had promised to "look into" the request, but that Complainant had never heard back. He also submitted an email response from the Librarian dated February 21, 2013, in which Herrera stated that Library staff continued to "look into the feasibility of making the necessary changes to the media set up at Koret Auditorium [] in order to accommodate your request."

Respondent: On March 5, 2013, the Librarian responded by letter to Complainant's request. In the 3/5/13 letter, the Librarian disputes Complainant's assertion that the Library violates the public meeting laws by failing to provide public access to Library audiovisual equipment. The letter asserts that no provision of the Ordinance or of the Brown Act requires that the Library provide such access. In particular, the letter asserts that Section 67.15 of the Ordinance does not prescribe any specific technological means by which the public must be given access to public comment. In addition, the letter asserts that the Library does not discriminate on the basis of viewpoint of members of the public making public comment.

The 3/5/13 letter also describes the efforts made to date by Library staff re the feasibility of providing audiovisual aids to members of the public for comment at Commission meetings, concluding that many options involved costs that the Library cannot absorb. The letter also notes that those currently allowed access to Library computers to use audiovisual equipment include only staff and those invited by the Library Commission or staff to make an official presentation to the Commission regarding an item on the Commission agenda. Otherwise, the Librarian asserts, the Commission does not allow access to its computers by members of the public, without regard for their viewpoint.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- Does Complainant assert that the Commission may not invite private parties to make official presentations on items on the agenda without providing equal time and access to members of the public who wish to respond to such presentations?
- Does Complainant assert that any member of the public making public comment on an item, as distinct from making an official presentation, is given access to Library audiovisual equipment in making that public comment?

LEGAL ISSUES/LEGAL DETERMINATIONS:

- Has the Librarian violated Section 67.15 of the Ordinance?

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

THE TASK FORCE FINDS THE ALLEGED VIOLATIONS TO BE TRUE OR NOT TRUE.

Memorandum

DATE: July 5, 2013
PAGE: 3
RE: Hartz v. Librarian (13013)

CHAPTER 67, SAN FRANCISCO ADMINISTRATIVE CODE (SUNSHINE ORDINANCE)

SEC. 67.15. PUBLIC TESTIMONY.

(a) Every agenda for regular meetings shall provide an opportunity for members of the public to directly address a policy body on items of interest to the public that are within policy body's subject matter jurisdiction, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by Section 67.7(e) of this article. However, in the case of a meeting of the Board of Supervisors, the agenda need not provide an opportunity for members of the public to address the Board on any item that has already been considered by a committee, composed exclusively of members of the Board, at a public meeting wherein all interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the Board.

(b) Every agenda for special meetings at which action is proposed to be taken on an item shall provide an opportunity for each member of the public to directly address the body concerning that item prior to action thereupon.

(c) A policy body may adopt reasonable regulations to ensure that the intent of subdivisions (a) and (b) are carried out, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker. Each policy body shall adopt a rule providing that each person wishing to speak on an item before the body at a regular or special meeting shall be permitted to be heard once for up to three minutes. Time limits shall be applied uniformly to members of the public wishing to testify.

(d) A policy body shall not abridge or prohibit public criticism of the policy, procedures, programs or services of the City, or of any other aspect of its proposals or activities, or of the acts or omissions of the body, on the basis that the performance of one or more public employees is implicated, or on any basis other than reasonable time constraints adopted in regulations pursuant to subdivision (c) of this section.

(e) To facilitate public input, any agenda changes or continuances shall be announced by the presiding officer of a policy body at the beginning of a meeting, or as soon thereafter as the change or continuance becomes known to such presiding officer. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)



RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2013 MAR -4 PM 12:29

SUNSHINE ORDINANCE TASK FORCE

1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102

Tel. (415) 554-7724; Fax (415) 554-7854

<http://www.sfgov.org/sunshine>

SUNSHINE ORDINANCE COMPLAINT

Complaint against which Department or Commission SAN FRANCISCO PUBLIC LIBRARY

Name of individual contacted at Department or Commission LUIS HERRERA, CITY LIBRARIAN

☐ Alleged violation public records access

☒ Alleged violation of public meeting. Date of meeting ALL LIBRARY COMMISSION

Sunshine Ordinance Section 67.15(d)
(If known, please cite specific provision(s) being violated)

Please describe alleged violation. Use additional paper if needed. Please attach any relevant documentation supporting your complaint.

DESPITE REPEATED REQUESTS FROM THE PUBLIC, CITY LIBRARIAN
LUIS HERRERA HAS CONTINUED TO DENY ACCESS TO MEMBERS
OF THE PUBLIC FOR USE OF AUDIOVISUAL EQUIPMENT REGULARLY
PROVIDED TO "APPROVED" GROUPS, THUS ABRIDGING PUBLIC COMMENT

Do you want a public hearing before the Sunshine Ordinance Task Force? ☒ yes ☐ no

Do you also want a pre-hearing conference before the Complaint Committee? ☐ yes ☒ no

(Optional)

Name RAY W HARTZ, JR Address Mr. Ray W. Hartz Jr.

839 Leavenworth St. #304
San Francisco, CA 94109-6131

Telephone No. (415) 345-9144 E-Mail Address RWHARTZJR@SFGO.CA.GOV

Date MARCH 4, 2013

Ray W Hartz Jr
Signature

I request confidentiality of my personal information. ☐ yes ☒ no

¹ NOTICE: PERSONAL INFORMATION THAT YOU PROVIDE MAY BE SUBJECT TO DISCLOSURE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND THE SUNSHINE ORDINANCE, EXCEPT WHEN CONFIDENTIALITY IS SPECIFICALLY REQUESTED. YOU MAY LIST YOUR BUSINESS/OFFICE ADDRESS, TELEPHONE NUMBER AND E-MAIL ADDRESS IN LIEU OF YOUR HOME ADDRESS OR OTHER PERSONAL CONTACT INFORMATION. Complainants can be anonymous as long as the complainant provides a reliable means of contact with the SOTF (Phone number, fax number, or e-mail address).

From: Luis Herrera (lherrera@sfpl.org)
To: rwhartzjr@sbcglobal.net;
Date: Thu, February 21, 2013 2:32:38 PM
Cc: sotf@sfgov.org; acastillo@sfpl.org; sue.a.blackman@sfgov.org; Jerry.Threet@sfgov.org;
chaffeej@pacbell.net; libraryusers2004@yahoo.com;
Subject: RE: Audiovisual access at Library Commission meetings - reply

Mr Hartz,

Staff is continuing to look into the feasibility of making the necessary changes in the media set up in the Library's Koret Auditorium set up in order to accommodate your request to allow for audio visual presentations from the public. I will provide a response to your request as soon as I have the information.

Thank you,

Luis

*Luis Herrera
City Librarian
San Francisco Public Library
100 Larkin Street, Room 600
San Francisco, CA 94102
415-557-4232 - Office
415-557-4239 - Fax
lherrera@sfpl.org*

From: Ray Hartz Jr [mailto:rwhartzjr@sbcglobal.net]
Sent: Thursday, February 14, 2013 12:10 PM
To: Luis Herrera
Cc: SOTF, Almer Castillo; sue.a.blackman@sfgov.org; SFCityAtty_Threet Jerry; James Chaffee; Peter Warfield
Subject: Fw: Audiovisual access at Library Commission meetings

Mr. Herrera,

It has been a month since my original request. Despite your commitment to "look into it," I've heard nothing since! And, obviously another Library Commission meeting has come and gone, with another just a week away, and members of the public have continued to be denied "access to the graphics" given to those of which you approve.

Ray W. Hartz, Jr.
Director San Francisco Open Government

----- Forwarded Message -----

From: Ray Hartz Jr <rwhartzjr@sbcglobal.net>
To: Luis Herrera <lherrera@sfpl.org>
Cc: "sue.a.blackman@sfgov.org" <sue.a.blackman@sfgov.org>; SOTF <sotf@sfgov.org>; James Chaffee <chaffeej@pacbell.net>; Peter Warfield <libraryusers2004@yahoo.com>; Jack Song <Jack.Song@sfgov.org>
Sent: Tue, January 29, 2013 8:43:57 AM
Subject: Re: Audiovisual access at Library Commission meetings

Mr. Herrera,

With the next Library Commission meeting on February 7th, I would like to know if there has been progress in your efforts to determine whether the public will be granted "equal access" to the audiovisual facilities provided to persons/organizations of whom the Library and Library Commission approve?

The facilities in the Koret Auditorium seem quite extensive! I'm not certain that it should be such a complicated arrangement that it would take much in effort and/or resources to provide the access to members of the public which is already provided to groups whose opinions you wish presented. Why is it that those who have "dissenting opinions" are denied the same level of assistance?

If groups like The Friends and the Civic Center Community Benefit District can provide you with materials to be shown, maybe members of the Public can submit audiovisual aids in the same manner, so that they can be included in the same way? Perhaps it comes down to the fact that you "approve" of their input and "disapprove" ours?

The presentations by "outside groups" are most often submitted as Microsoft PowerPoint documents. Perhaps if I submit my AV aids in the same fashion, not only can they be utilized in the meeting, but the Library Commission can include them in the public information packets sent to interested persons? If you can do it for those you like, public policy dictates that "equal access" be provided even to those of whom you disapprove, unless it is your intent to continue to "abridge public criticism of the policy, procedures, programs or services of the City, or of any other aspect of its proposals or activities, or of the acts or omission of the body, on the basis that the performance of one or more public employees is implicated..." This would, of course be a violation of Sec 67.15 Public Testimony of the Sunshine Ordinance.

Sincerely,

Ray W. Hartz, Jr.

Director, San Francisco Open Government

From: Ray Hartz Jr <rwartzjr@sbcglobal.net>
To: Luis Herrera <lherrera@sfpd.org>
Cc: "sue a blackman@sfgov.org" <sue.a.blackman@sfgov.org>; SOTF <sotf@sfgov.org>; James Chaffee <chaffeej@pacbell.net>; Peter Warfield <librarvusers2004@yahoo.com>; Jack Song <Jack.Song@sfgov.org>
Sent: Mon, January 14, 2013 12:30:16 PM
Subject: Audiovisual access at Library Commission meetings

Mr. Herrera,

I would request that arrangements be made to allow members of the public the ability to use audiovisual

Ausberry, Andrea

From: Ray Hartz Jr [rwhartzjr@sbcglobal.net]
Sent: Thursday, March 14, 2013 6:17 AM
To: SOTF
Cc: Threet, Jerry
Subject: Fw: Audiovisual access at Library Commission meetings - reply - reply
Attachments: [Untitled].pdf

Dear Ms. Ausberry,

Please add this email chain, and the attached response, to the file for complaint #13013, Ray Hartz v. Luis Herrera. It contains the original request, subsequent correspondence, and the final reply to my request to the City Librarian, Luis Herrera.

Thank you,

Ray W. Hartz, Jr.
Director, San Francisco Open Government

----- Forwarded Message -----

From: Luis Herrera <lherrera@sfppl.org>
To: Ray Hartz Jr <rwhartzjr@sbcglobal.net>
Cc: SOTF <sotf@sfgov.org>; Almer Castillo <acastillo@sfppl.org>; "sue.a.blackman@sfgov.org" <sue.a.blackman@sfgov.org>; SFCityAtty_Threet Jerry <Jerry.Threet@sfgov.org>; James Chaffee <chaffeej@pacbell.net>; Peter Warfield <libraryusers2004@yahoo.com>; "ethics.commission@sfgov.org" <ethics.commission@sfgov.org>; "john.st.croix@sfgov.org" <john.st.croix@sfgov.org>
Sent: Wed, March 6, 2013 4:41:01 PM
Subject: RE: Audiovisual access at Library Commission meetings - reply - reply.

Mr. Hartz,

Please see attached response regarding your request for audiovisual access at Library Commission meetings.

Luis Herrera, City Librarian

From: Ray Hartz Jr [mailto:rwhartzjr@sbcglobal.net]
Sent: Thursday, February 21, 2013 8:38 PM
To: Luis Herrera
Cc: SOTF; Almer Castillo; sue.a.blackman@sfgov.org; SFCityAtty_Threet Jerry; James Chaffee; Peter Warfield; ethics.commission@sfgov.org; john.st.croix@sfgov.org
Subject: Re: Audiovisual access at Library Commission meetings - reply

Mr. Herrera,

I have made it very, very clear that whatever process you use to incorporate the graphics of those of which you approve (The Friends, the Community Benefit District, etc.) is something I can work with. If they send you Microsoft Powerpoint documents by email to include them in the projected images, I can do the same. I'm not asking for special changes, just the ability to access the graphics in the same way you allow other to. You seem to want to make this a very complicated request, when it's something you

do (and have been doing) for people at almost every meeting of the Library Commission. You simply want to deny the same access to me and others because you don't like what we say! That is suppressing dissenting opinion, which is forbidden under both the Sunshine Ordinance and the Brown Act.

Ray W. Hartz, Jr.
Director, San Francisco Open Government

From: Luis Herrera <lherrera@sfppl.org>
To: Ray Hartz Jr <rwhartzjr@sbcglobal.net>
Cc: SOTF <sotf@sfgov.org>; Almer Castillo <acastillo@sfppl.org>; "sue.a.blackman@sfgov.org" <sue.a.blackman@sfgov.org>; SFCityAtty_Threet Jerry <Jerry.Threet@sfgov.org>; James Chaffee <jchaffee@pacbell.net>; Peter Warfield <libraryusers2004@yahoo.com>
Sent: Thu, February 21, 2013 2:32:41 PM
Subject: RE: Audiovisual access at Library Commission meetings - reply

Mr. Hartz,

Staff is continuing to look into the feasibility of making the necessary changes in the media set up in the Library's Koret Auditorium set up in order to accommodate your request to allow for audio visual presentations from the public. I will provide a response to your request as soon as I have the information.

Thank you,

Luis

*Luis Herrera
City Librarian
San Francisco Public Library
100 Larkin Street, Room 600
San Francisco, CA 94102
415-557-4232 - Office
415-557-4239 - Fax
lherrera@sfppl.org*

From: Ray Hartz Jr [<mailto:rwhartzjr@sbcglobal.net>]
Sent: Thursday, February 14, 2013 12:10 PM
To: Luis Herrera
Cc: SOTF; Almer Castillo; sue.a.blackman@sfgov.org; SFCityAtty_Threet Jerry; James Chaffee; Peter Warfield
Subject: Fw: Audiovisual access at Library Commission meetings

Mr. Herrera,

It has been a month since my original request. Despite your commitment to "look into it," I've heard nothing since! And, obviously another Library Commission meeting has come and gone, with another just a week away, and members of the public have continued to be denied "access to the graphics" given to those of which you approve.

Ray W. Hartz, Jr.
Director San Francisco Open Government

--- Forwarded Message ---

From: Ray Hartz Jr <rwhartzjr@sbcglobal.net>
To: Luis Herrera <lherrera@sfpd.org>
Cc: sue.a.blackman@sfgov.org <sue.a.blackman@sfgov.org>; SOTF <sotf@sfgov.org>; James Chaffee <chaffeej@pacbell.net>; Peter Warfield <libraryusers2004@yahoo.com>; Jack Song <Jack.Song@sfgov.org>
Sent: Tue, January 29, 2013 8:43:57 AM
Subject: Re: Audiovisual access at Library Commission meetings

Mr. Herrera,

With the next Library Commission meeting on February 7th, I would like to know if there has been progress in your efforts to determine whether the public will be granted "equal access" to the audiovisual facilities provided to persons/organizations of whom the Library and Library Commission approve?

The facilities in the Koret Auditorium seem quite extensive! I'm not certain that it should be such a complicated arrangement that it would take much in effort and/or resources to provide the access to members of the public which is already provided to groups whose opinions you wish presented. Why is it that those who have "dissenting opinions" are denied the same level of assistance?

If groups like The Friends and the Civic Center Community Benefit District can provide you with materials to be shown, maybe members of the Public can submit audiovisual aids in the same manner, so that they can be included in the same way? Perhaps it comes down to the fact that you "approve" of their input and "disapprove" ours?

The presentations by "outside groups" are most often submitted as Microsoft PowerPoint documents. Perhaps if I submit my AV aids in the same fashion, not only can they be utilized in the meeting, but the Library Commission can include them in the public information packets sent to interested persons? If you can do it for those you like, public policy dictates that "equal access" be provided even to those of whom you disapprove, unless it is your intent to continue to "abridge public criticism of the policy, procedures, programs or services of the City, or of any other aspect of its proposals or activities, or of the acts or omission of the body, on the basis that the performance of one or more public employees is implicated...." This would, of course be a violation of Sec 67.15 Public Testimony of the Sunshine Ordinance.

Sincerely,

Ray W. Hartz, Jr.

Director, San Francisco Open Government

From: Ray Hartz Jr <rwhartzjr@sbcglobal.net>
To: Luis Herrera <lherrera@sfpd.org>
Cc: sue.a.blackman@sfgov.org <sue.a.blackman@sfgov.org>; SOTF <sotf@sfgov.org>; James Chaffee <chaffeej@pacbell.net>; Peter Warfield <libraryusers2004@yahoo.com>; Jack Song <Jack.Song@sfgov.org>

Sent: Mon, January 14, 2013 12:30:16 PM

Subject: Audiovisual access at Library Commission meetings

Mr. Herrera,

I would request that arrangements be made to allow members of the public the ability to use audiovisual aids to support their public comments.

In the Sunshine Ordinance, under section 67.15 PUBLIC TESTIMONY, section (d) "A policy body shall not abridge or prohibit public criticism of the policy, procedures, programs or services of the City..."

While the Library and the Library Commission allow use of audiovisual equipment to groups and persons of which you "approve," you have continued to deny access to those who have "critical comments." There is a well established animosity toward certain members of the public who have "critical comment." The President of the Library Commission has been found to have illegally abridged public comment by the Sunshine Ordinance Task Force. She was subsequently found by the San Francisco Ethics Commission to have engaged in unacceptable behavior in this regard and recommended for removal.

I, and other members of the public, have had public comment censored and excluded from the official record of public meetings. It has only been through a long and drawn-out process that my public testimony has been accurately represented in the official record, by inclusion of my submitted 150 word summaries. You have, in fact, continued to treat other members of the public in ways that essentially censor their public comments.

You, have been found to have withheld public records, which you knew were disclosable. This matter has been referred to the Ethics Commission, and, I look forward to having the opportunity to present my case there and hear your response. Although, I have to admit, that I believe you will send Ms. Blackman to try and justify your actions!

All other City boards and commission, in whose meetings audiovisual aids are used, provide access to the public to that equipment. Although the facilities at the Library are available, you only deny them to members of the public who are "critical" of the operations of the Library and/or Library Commission. It is my contention that this is done to limit the ability of members of the public to make effective public comment, and, as such, abridges public criticism.

Sincerely,

Ray W. Hartz, Jr.
Director, San Francisco Open Government

Official SFPL Use Only

Official SFPL use only

Official SFPL Use Only

Ausberry, Andrea

From: Ray Hartz Jr [rwhartzjr@sbcglobal.net]
Sent: Wednesday, June 26, 2013 3:37 PM
To: SOTF
Subject: Fw: Audiovisual access at Library Commission meetings - reply - reply
Attachments: [Untitled].pdf

Dear Ms. Ausberry,

Please include the following email chain in the file for Case #13013, Ray Hartz v Luis Herrera, City Librarian.

I would like the Task Force members to note that I made it clear that I was not expecting special treatment, but was expecting equal treatment.

I offered to provide documents in Microsoft PowerPoint, which is what I believe all of their "invited" participants use, and that option was ignored in his response.

Mr. Herrera wants to make this seem like an impossible request by claiming a need for huge expenditures, which is not the case!

He only wants to deny access based upon "viewpoint discrimination," allowing those he invites (read approves) access and denying the same to those who chose to attend (read disapproves.)

This is not only a clear violation of the Sunshine Ordinance, but I believe, the Brown Act.

Mr. Herrera has already been found in violation for withholding public records by the Task Force and referred to the Board of Supervisors. This is truly a "pattern of behavior" designed to censor and/or abridge public comment!

Sincerely,

Ray W. Hartz, Jr.
Director, San Francisco Open Government

----- Forwarded Message -----

From: Luis Herrera <lherrera@sfpl.org>
To: Ray Hartz Jr <rwhartzjr@sbcglobal.net>
Cc: SOTF <sotf@sfgov.org>; Almer Castillo <acastillo@sfpl.org>; "sue.a.blackman@sfgov.org" <sue.a.blackman@sfgov.org>; SFCityAtty_Threet Jerry <Jerry.Threet@sfgov.org>; James Chaffee <chaffeej@pacbell.net>; Peter Warfield <libraryusers2004@yahoo.com>; "ethics.commission@sfgov.org" <ethics.commission@sfgov.org>; "john.st.croix@sfgov.org" <john.st.croix@sfgov.org>
Sent: Wednesday, March 6, 2013 4:40 PM
Subject: RE: Audiovisual access at Library Commission meetings - reply - reply

Mr. Hartz,

Please see attached response regarding your request for audiovisual access at Library Commission meetings.

Luis Herrera, City Librarian

From: Ray Hartz Jr [mailto:rwartzjr@sbcglobal.net]
Sent: Thursday, February 21, 2013 8:38 PM
To: Luis Herrera
Cc: SOTF; Almer Castillo, sue.a.blackman@sfgov.org; SFCityAtty_Threet Jerry; James Chaffee; Peter Warfield;
edica.commission@sfgov.org; john.st.croix@sfgov.org
Subject: Re: Audiovisual access at Library Commission meetings - reply

Mr. Herrera,

I have made it very, very clear that whatever process you use to incorporate the graphics of those of which you approve (The Friends, the Community Benefit District, etc.) is something I can work with. If they send you Microsoft Powerpoint documents by email to include them in the projected images, I can do the same. I'm not asking for special changes, just the ability to access the graphics in the same way you allow other to. You seem to want to make this a very complicated request, when it's something you do (and have been doing) for people at almost every meeting of the Library Commission. You simply want to deny the same access to me and others because you don't like what we say! That is suppressing dissenting opinion, which is forbidden under both the Sunshine Ordinance and the Brown Act.

Ray W. Hartz, Jr.
Director, San Francisco Open Government

From: Luis Herrera <lherrera@sfppl.org>
To: Ray Hartz Jr <rwartzjr@sbcglobal.net>
Cc: SOTF <sotf@sfgov.org>; Almer Castillo <acastillo@sfppl.org>; "sue.a.blackman@sfgov.org" <sue.a.blackman@sfgov.org>; SFCityAtty_Threet Jerry <Jerry.Threet@sfgov.org>; James Chaffee <chaffeej@pacbell.net>; Peter Warfield <libraryusers2004@yahoo.com>
Sent: Thu, February 21, 2013 2:32:41 PM
Subject: RE: Audiovisual access at Library Commission meetings - reply

Mr. Hartz,

Staff is continuing to look into the feasibility of making the necessary changes in the media set up in the Library's Koret Auditorium set up in order to accommodate your request to allow for audio visual presentations from the public. I will provide a response to your request as soon as I have the information.

Thank you,

Luis

*Luis Herrera
City Librarian
San Francisco Public Library
100 Larkin Street, Room 600
San Francisco, CA 94102
415-557-4232 - Office
415-557-4239 - Fax
lherrera@sfppl.org*

From: Ray Hartz Jr [mailto:rwartzjr@sbcglobal.net]
Sent: Thursday, February 14, 2013 12:10 PM
To: Luis Herrera

Cc: SOTF; Almer Castillo; sue.a.blackman@sfgov.org; SFCityAtty_Threet Jerry; James Cnaffee; Peter Warfield
Subject: Fw: Audiovisual access at Library Commission meetings

Mr. Herrera,

It has been a month since my original request. Despite your commitment to "look into it," I've heard nothing since! And, obviously another Library Commission meeting has come and gone, with another just a week away, and members of the public have continued to be denied "access to the graphics" given to those of which you approve.

Ray W. Hartz, Jr.
Director San Francisco Open Government

----- Forwarded Message -----

From: Ray Hartz Jr <rwartzjr@sbcglobal.net>
To: Luis Herrera <lherrera@sfpd.org>
Cc: "sue.a.blackman@sfgov.org" <sue.a.blackman@sfgov.org>; SOTF <sotf@sfgov.org>; James Chaffee <chaffeej@pacbell.net>; Peter Warfield <libraryusers2004@yahoo.com>; Jack Song <Jack.Song@sfgov.org>
Sent: Tue, January 29, 2013 8:43:57 AM
Subject: Re: Audiovisual access at Library Commission meetings

Mr. Herrera,

With the next Library Commission meeting on February 7th, I would like to know if there has been progress in your efforts to determine whether the public will be granted "equal access" to the audiovisual facilities provided to persons/organizations of whom the Library and Library Commission approve?

The facilities in the Koret Auditorium seem quite extensive! I'm not certain that it should be such a complicated arrangement that it would take much in effort and/or resources to provide the access to members of the public which is already provided to groups whose opinions you wish presented. **Why is it that those who have "dissenting opinions" are denied the same level of assistance?**

If groups like The Friends and the Civic Center Community Benefit District can provide you with materials to be shown, maybe members of the Public can submit audiovisual aids in the same manner, so that they can be included in the same way? Perhaps it comes down to the fact that you "approve" of their input and "disapprove" ours?

The presentations by "outside groups" are most often submitted as Microsoft PowerPoint documents. Perhaps if I submit my AV aids in the same fashion, not only can they be utilized in the meeting, but the Library Commission can include them in the public information packets sent to interested persons? If you can do it for those you like, public policy dictates that "equal access" be provided even to those of whom you disapprove, unless it is your intent to continue to "abridge public criticism of the policy, procedures, programs or services of the City, or of any other aspect of its proposals or activities, or of the acts or omission of the body, on the basis that the performance of one or more public employees is implicated..." This would, of course be a violation of Sec 67.15 Public Testimony of the Sunshine Ordinance.

Sincerely,

Ray W. Hartz, Jr.
Director, San Francisco Open Government

From: Ray Hartz Jr [mailto:rwhartzjr@sbcglobal.net]
Sent: Thursday, February 21, 2013 8:38 PM
To: Luis Herrera
Cc: SOTF; Almer Castillo; sue.a.blackman@sfgov.org; SFCityAtty_Threet Jerry; James Chaffee; Peter Warfield; ethics.commission@sfgov.org; john.st.croix@sfgov.org
Subject: Re: Audiovisual access at Library Commission meetings - reply

Mr. Herrera,

I have made it very, very clear that whatever process you use to incorporate the graphics of those of which you approve (The Friends, the Community Benefit District, etc.) is something I can work with. If they send you Microsoft Powerpoint documents by email to include them in the projected images, I can do the same. I'm not asking for special changes, just the ability to access the graphics in the same way you allow other to. You seem to want to make this a very complicated request, when it's something you do (and have been doing) for people at almost every meeting of the Library Commission. You simply want to deny the same access to me and others because you don't like what we say! That is suppressing dissenting opinion, which is forbidden under both the Sunshine Ordinance and the Brown Act.

Ray W. Hartz, Jr.
Director, San Francisco Open Government

From: Luis Herrera <lherrera@sfpl.org>
To: Ray Hartz Jr <rwhartzjr@sbcglobal.net>
Cc: SOTF <sotf@sfgov.org>; Almer Castillo <acastillo@sfpl.org>; "sue.a.blackman@sfgov.org" <sue.a.blackman@sfgov.org>; SFCityAtty_Threet Jerry <Jerry.Threet@sfgov.org>; James Chaffee <chaffeej@pacbell.net>; Peter Warfield <libraryusers2004@yahoo.com>
Sent: Thu, February 21, 2013 2:32:41 PM
Subject: RE: Audiovisual access at Library Commission meetings - reply

Mr. Hartz,

Staff is continuing to look into the feasibility of making the necessary changes in the media set up in the Library's Koret Auditorium set up in order to accommodate your request to allow for audio visual presentations from the public. I will provide a response to your request as soon as I have the information.

Thank you,

Luis

*Luis Herrera
City Librarian
San Francisco Public Library
100 Larkin Street, Room 600
San Francisco, CA 94102
415-557-4232 - Office
415-557-4239 - Fax
lherrera@sfpl.org*

From: Ray Hartz Jr [mailto:rwhartzjr@sbcglobal.net]
Sent: Thursday, February 14, 2013 12:10 PM
To: Luis Herrera

Cc: SOTF; Almer Castillo; sue.a.blackman@sfgov.org; SFCityAtty_Threet Jerry; James Cnafee; Peter Warfield
Subject: Fw: Audiovisual access at Library Commission meetings

Mr. Herrera,

It has been a month since my original request. Despite your commitment to "look into it," I've heard nothing since! And, obviously another Library Commission meeting has come and gone, with another just a week away, and members of the public have continued to be denied "access to the graphics" given to those of which you approve.

Ray W. Hartz, Jr.
Director San Francisco Open Government

----- Forwarded Message -----

From: Ray Hartz Jr <rwhartzjr@sbcglobal.net>
To: Luis Herrera <lherrera@sfppl.org>
Cc: "sue.a.blackman@sfgov.org" <sue.a.blackman@sfgov.org>; SOTF <sotf@sfgov.org>; James Chaffee <chaffeej@pachell.net>; Peter Warfield <libraryusers2004@yahoo.com>; Jack Song <Jack.Song@sfgov.org>
Sent: Tue, January 29, 2013 8:43:57 AM
Subject: Re: Audiovisual access at Library Commission meetings

Mr. Herrera,

With the next Library Commission meeting on February 7th, I would like to know if there has been progress in your efforts to determine whether the public will be granted "equal access" to the audiovisual facilities provided to persons/organizations of whom the Library and Library Commission approve?

The facilities in the Koret Auditorium seem quite extensive! I'm not certain that it should be such a complicated arrangement that it would take much in effort and/or resources to provide the access to members of the public which is already provided to groups whose opinions you wish presented. **Why is it that those who have "dissenting opinions" are denied the same level of assistance?**

If groups like The Friends and the Civic Center Community Benefit District can provide you with materials to be shown, maybe members of the Public can submit audiovisual aids in the same manner, so that they can be included in the same way? Perhaps it comes down to the fact that you "approve" of their input and "disapprove" ours?

The presentations by "outside groups" are most often submitted as Microsoft PowerPoint documents. Perhaps if I submit my AV aids in the same fashion, not only can they be utilized in the meeting, but the Library Commission can include them in the public information packets sent to interested persons? If you can do it for those you like, public policy dictates that "equal access" be provided even to those of whom you disapprove, unless it is your intent to continue to "abridge public criticism of the policy, procedures, programs or services of the City, or of any other aspect of its proposals or activities, or of the acts or omission of the body, on the basis that the performance of one or more public employees is implicated...". This would, of course be a violation of Sec 67.15 Public Testimony of the Sunshine Ordinance.

Sincerely,

Ray W. Hartz, Jr.
Director, San Francisco Open Government

From: Ray Hartz Jr <rwartzjr@sbcglobal.net>
To: Luis Herrera <lherrera@sfpl.org>
Cc: "sue.a.blackman@sfgov.org" <sue.a.blackman@sfgov.org>; SOTF <sotf@sfgov.org>; James Chaffee <chaffeej@pacbell.net>; Peter Warfield <libraryusers2004@yahoo.com>; Jack Song <Jack.Song@sfgov.org>
Sent: Mon, January 14, 2013 12:30:16 PM
Subject: Audiovisual access at Library Commission meetings

Mr. Herrera,

I would request that arrangements be made to allow members of the public the ability to use audiovisual aids to support their public comments.

In the Sunshine Ordinance, under section 67.15 PUBLIC TESTIMONY, section (d) "A policy body shall not abridge or prohibit public criticism of the policy, procedures, programs or services of the City..."

While the Library and the Library Commission allow use of audiovisual equipment to groups and persons of which you "approve," you have continued to deny access to those who have "critical comments." There is a well established animosity toward certain members of the public who have "critical comment." The President of the Library Commission has been found to have illegally abridged public comment by the Sunshine Ordinance Task Force. She was subsequently found by the San Francisco Ethics Commission to have engaged in unacceptable behavior in this regard and recommended for removal.

I, and other members of the public, have had public comment censored and excluded from the official record of public meetings. It has only been through a long and drawn-out process that my public testimony has been accurately represented in the official record, by inclusion of my submitted 150 word summaries. You have, in fact, continued to treat other members of the public in ways that essentially censor their public comments.

You, have been found to have withheld public records, which you knew were disclosable. This matter has been referred to the Ethics Commission, and, I look forward to having the opportunity to present my case there and hear your response. Although, I have to admit, that I believe you will send Ms. Blackman to try and justify your actions!

All other City boards and commission, in whose meetings audiovisual aids are used, provide access to the public to that equipment. Although the facilities at the Library are available, you only deny them to members of the public who are "critical" of the operations of the Library and/or Library Commission. It is my contention that this is done to limit the ability of members of the public to make effective public comment, and, as such, abridges public criticism.

Sincerely,

Ray W. Hartz, Jr.
Director, San Francisco Open Government

Official SFPL Use Only

Official SFPL use only

Official SFPL Use Only

Official SFPL use only.



San Francisco Public Library

March 5, 2013

Mr. Ray Hartz
839 Leavenworth Street, Apt. 304
San Francisco, CA 94109-6131
Via email: rwhartzr@sbcglobal.net

Dear Mr. Hartz,


On January 14, 2013, you requested that the San Francisco Public Library (SFPL) allow members of the public to use audiovisual aids to support their public comments. You assert that SFPL denies the public access to the audiovisual aids in an effort to abridge public criticism. You also assert that such action violates San Francisco Administrative Code Section 67.15, which prohibits a policy body from "abridg[ing] or prohibi[t]ing public criticism of the policy, procedures, programs or services of the City."

I respectfully disagree. The Commission does not discriminate on the basis of viewpoint in allowing members to exercise their right to address public comments to the Commission. Further, neither the Brown Act nor the Sunshine Ordinance gives members of the public the right of access during public comment to SFPL audiovisual technology. In particular, Administrative Code Section 67.15, which specifically addresses the right to public comment in San Francisco, does not prescribe the method, means, or mode of technology that SFPL must allow the public to use during public comment.

Library staff have explored options to accommodate your request. We looked at providing the public with a basic transparency device that uses an overhead projector. However, this option was not viable as the projector could not project the image on the auditorium stage screen to allow the public and commissioners to view. The only option available for audio visual presentations at the SFPL Commission meetings would require reconfiguring the department's information technology set up to allow for the public to download their presentations from a laptop from the public lectern. This option would require the library department to incur additional expense and resources. Specifically, we would need to enlist the services of engineering staff and a construction contractor to modify the cable set up, including running cables under the stage to the public lectern, where members of the public would place a laptop or use a jump drive to connect to the stage podium and projection room. Additional equipment costs to provide the interface for the laptop and modifying the lectern to accommodate the equipment and ensure proper ADA set up would also be necessary. Preliminary cost estimates from our facilities department working with the Department of Public Works places that cost at a minimum of \$40,000. The Library Department does not have the resources to incur these additional costs.

Currently, the Commission allows only SFPL staff and individuals or organizations invited to make presentations to the Commission to use the Library's computers to connect to its audio visual equipment. For example, the architects as part of the Bond Managers report, other City departments or the Friends of the Library may have, on occasion, connected their laptops or preloaded materials to SFPL audiovisual equipment for presentations that the Commission has invited them to make for items that the Commission has placed on its agenda. However, SFPL staff have expended resources to load the materials into the Library's information processing system ahead of time. Where the Commission invites private parties to make presentations, SFPL expends its resources as necessary to effect those presentations. Otherwise, the department uniformly declines to allow members of the public, without regard to their viewpoint, to connect their laptops or external devices to the department's audiovisual facilities because of the additional expense and resources discussed above.

Sincerely,


Luis Herrera
City Librarian

September 12, 2013

Members, Sunshine Ordinance Task Force

Via email sotf@sfgov.org

Re: Complaint #13013, Ray Hartz v. City Librarian Luis Herrera
Complaint #13056, Ray Hartz v. City Librarian Luis Herrera

Dear Chairman Grant and Task Force Members:

This letter responds to the Sunshine Ordinance Task Force's (SOTF) ruling at its July 9, 2013 meeting regarding Complaint #13013, Ray Hartz v. City Librarian Luis Herrera and Complaint #13056, Ray Hartz v. City Librarian Luis Herrera.

The Order of Determination was issued on August 19, 2013 ruling that the Library Commission violated Section 67.15(a) and 67.15(b) of the Sunshine Ordinance for abridging public comment by not providing equal access to audio visual equipment by invited parties and the public. It further states that the Library Commission shall provide equal access to its audio visual equipment and appear before the Compliance and Amendments Committee on September 17, 2013 for a hearing on its compliance with the Order.

The Library Commission met on August 15, 2013 and voted 6-0 to not allow the use of audio visual equipment for public comment because allowing members of the public to use audio visuals during public comment would require SFPL to expend significant resources to make the necessary accommodations to modify the technology set up that SFPL uses. The Commission made it clear that the public could bring printed copies of presentations to the Commission and have them available at the back of the room. (See attached Draft Library Commission Minutes for August 15, 2013).

The Library explored various options that would allow the public to use the audio visuals during public comment, including providing the public with a basic transparency device that uses an overhead projector. This option was not viable as the projector could not project the image on the auditorium screen to allow the public and commission to view. The only option available for audio visual presentations at the Library Commission meeting would require reconfiguring the department's information technology set up to allow for the public to download their presentations from a laptop from the public. This option would require the Library to retain the services of engineering staff and a construction contractor to modify the cable set up, including running cables under the stage podium and projection room. Additional equipment costs to provide the interface for the laptop and modifying the lectern to accommodate the equipment and ensure proper ADA set up would be necessary. Preliminary cost estimates from our facilities department working with the Department of Public Works places that cost at a minimum of \$40,000, which the Library does not have.

The Commission does not discriminate on the basis of viewpoint in allowing members of the public to exercise their right to address public comments to the Commission. The Library Commission allows only SFPL staff and individuals or organizations invited to make presentations to the Commission to use the Library's computers to connect its audio visual equipment. This policy is not based on viewpoint. Additionally, the City Attorney's Office has advised the Commission that neither the Brown Act nor the Sunshine Ordinance gives members of the public the right of access during public comment to SFPL audiovisual technology. In particular, Administrative Code Section 67.15 which specifically addresses the right to public comments in San Francisco does not prescribe the method, means or mode of technology that SFPL must allow the public to use during public comment.

We hope that this resolves the Task Force's concerns about this matter. Thank you for your time and consideration.

Sincerely,

Sue Blackman
Library Commission Secretary/Custodian of Records

cc: Luis Herrera, City Librarian
Ray Hartz
Jewelle Gomez, Library Commission President

Draft Library Commission Minutes August 15, 2013

AGENDA ITEM 2. USE OF AUDIO VISUAL EQUIPMENT BY THE PUBLIC

Luis Herrera, City Librarian, referred to a memo in the Commissioner's packet and explained the background of the item. He said there is also a letter to Mr. Ray Hartz dated March 5, 2013 and a copy of Section 67.15 Public Testimony of the Sunshine Ordinance. He said Mr. Hartz had requested that members of the public be able to use audio visual aids to support public comment. His request was declined by the Library and he subsequently filed a complaint with the SOTF. He said Mr. Hartz asserts that the Library denies public access to audiovisual aids to abridge public criticism and he also asserts that such action violates San Francisco Administrative Code Section 67.15. He said the Library did explore options to accommodate his request including providing the public with a basic transparency device that uses an overhead projector. He said this option was not feasible as the projector could not project the image on the auditorium screen to allow the public and commission to view. He said the only option available for audio visual presentations at the Library Commission meeting would require reconfiguring the Library's information technology set up to allow the public to download their presentations from a laptop. He said this option would require expenditure of additional expenses and resources. He said engineering staff and a construction contractor would need to modify the cable set up, including running cables under the stage podium and into the projection room. He said the Library conferred with the Department of Public Works to ensure proper ADA setup and the preliminary cost estimate range up to \$40,000 which is not included in this year's budget. He said the Library Commission only allows SFPL staff and individuals or organizations invited to make presentations to the Commission to use the Library's computers to connect to its audio visual equipment. He said for these reasons Mr. Hartz' request was declined. He said the SOTF heard the complaint on July 9 and found the Library in violation of Administrative Code Section 67.15 for abridging public comment by not providing access to the audiovisual equipment. He said they referred the matter to the SOTF Compliance and Amendments Committee. He said the item before you will give the Commission the opportunity to discuss and possibly take action on this matter. The Commission may choose to allow members of the public to use audio visuals during public comment by supporting additional expenses and resources. He said the City Attorney has opined that whether the Library provides the public with access to the audio visual equipment is a policy call because neither the Brown Act nor the Sunshine Ordinance prescribes the method, means, or mode of technology that SFPL must allow the public to use during public comment.

Public Comment

An anonymous citizen said this is a situation where Stacey Aldrich the State Librarian appeared before you last February and she described how communication is becoming more digital and visual and it is necessary in order to allow full discourse. He said you have in front of you a copy of the law and two letters from the City Librarian. He asked where are the letters from Ray Hartz, where is the complaint, where are the deliberations from the Sunshine Ordinance Task Force or the SOTF's Order of Determination. He said you have none of that

in front of you nor do you have anything from the City Attorney that supports Luis Herrera's characterization of their opinion. He said this is a basic right. He said the law doesn't say that you have to provide visual access. He said what the law says is that you have to provide equality and equal treatment in a public forum. He said this is a situation where this Library Commission can just say no. He said you have not been given a draft resolution so that you can see what it would look like to approve or reject. He said you have not been given any of the real information about why this is not only good policy but the law and why the SOTF approved it. He said the Commission should simply say that you are going to reject this one-sided abuse of the Commission's intelligence and approve the citizen's access to the graphics.

The following written summary was provided by the speaker, anonymous citizen. The content is neither generated by, nor subject to approval or verification of accuracy by the Library Commission.

Stop the Hate, Stop the Ignorance – Don't give money to, or accept money from the Friends of the Library. The mot de Coulter is wonderfully appropriate now. The State Librarian Stacey Aldrich appeared before you in February, 2012, and described how communication is becoming more digital and visual, and that is necessary to modern discourse. You have two letters from the City Librarian. Where are the letters from Mr. Hartz, the Sunshine complaint, the Sunshine Ordinance Task Force's deliberations and determination, or confirmation of the City Attorney's opinion? The law doesn't say you have to provide visual access. It says you have to provide equal treatment in a public forum. You have not even been given a draft resolution to approve. You have no information on why the Sunshine Task Force approved it. Just say, No. You can reject this one-sided abuse of your intelligence and approve the citizen's access to graphics.

Ray Hartz, Director San Francisco Open Government, said he knows what to expect because there will be claims that you need to spend more than \$40,000 to comply, that there are security risks, that the law does not require you to allow access, ad nauseam. He said what he submitted was two PowerPoint slides and you will see in your packets that there are two or three presentations all done in the same format and that is all it takes to include his input. He said you don't have to spend \$40,000, if you have a security risk print the documents out and scan them with your own equipment. He said these are two quotes from the authors Frank Herbert and Upton Sinclair. He said if that isn't censorship, I don't know what is. He said as he said at the SOTF hearing, all he is asking for is equal treatment. He said include his Microsoft PowerPoint slides just as you do for those of whom you approve. He said perhaps it would be more accurate to say for those who approve of you. He said it is bad enough that you have to let us speak and you can't censor what we say. He said your fear is that we would be even more effective. He said he knows there is one question that will not be asked or if it is asked it will not be answered. He said why does the Commission want so badly to restrict what we have to say. He said the Commission is afraid we will show charts with real numbers showing that out of \$53 Million what the library got was 6% or 8% of the money. He said we have a group that raises money for the library but really raised the money to spend on themselves.

The following written summary was provided by the speaker, Ray Hartz. The content is neither generated by, nor subject to approval or verification of accuracy by the Library Commission.

How I expect this "discussion" to go: claims that you need to spend more than \$40,000 to comply, that there are security risks, that the law does not require you to allow access, ad nauseam. "Straw men" set up to allow you to "pretend to discuss" restrictions on public comment. As I said at the SOTF hearing: all I'm asking for is equal treatment! Include my Microsoft PowerPoint slides just as you do for those who you approve. Perhaps it would be more accurate to say for those who approve of you? It's bad enough that you have to let us speak and you can't censor what we say! Your fear is that we would be even more effective! I know there is one question that will not be asked, or if it is will not be answered: why do you want so badly to restrict what we say?

Peter Warfield, Library Users Association, said this is both a sad moment and an opportunity for this Library Commission to show some level of responsibility and of legal behavior. He said he expects no action and very little real discussion. He said the SOTF heard Mr. Hartz' complaint and the Library's defense of its actions in refusing to provide PowerPoint displays for the public. He said the Library brought their head of Facilities and the Library was practically laughed out of the room. He said the Task Force members were openly skeptical and scoffing and counting reasons given by the Library. He said the request Mr. Hartz has made is for the same treatment as other people that you have presenting including others like the Friends that have no connection with the Library. He said there would be no requirement whatsoever for any change of equipment. He said Mr. Hartz pointed out that if you are worried about security issues you can simply print out the document, scan it and include it in what you present to the public when the public speaks. He said even if what he thinks is a preposterously inflated number of \$40,000, what is equal access worth for democracy. He said you spend money on ADA requirements and you spend money on these microphones. He said \$40,000 is a speck of dust compared to your \$100 Million budget this year. He said the City Librarian could foot the bill himself with just his own discretionary fund that he gets from the Friends.

Robert B. Livingston said he has a lot of problems with this Library and there are three things he would ask for. He said first thing is anybody that comes to this Library gets on the elevator and they discover the buttons aren't lit so they have to guess which one is opening for them. He said fix the buttons in the elevator. He said second when you get out on the third floor you look out the window and you see a ledge out there with a crushed can and wet newspaper that has been there for God knows how long and it seems like people working in this environment would notice something like that and have it cleaned off. He said the last thing is if you go into any Department Store multi-level you find a menu on the inside of the elevator that directs you to what is on each floor.

Commission Discussion

President Gomez said thank you to staff for framing our discussion and giving us the information that we are able to consider. She said she would make a correction to one thing that was said by a member of the public that these particular three people who are lobbying for this audiovisual access indicate that everyone else from the public has the opportunity, including the Friends who do not have a direct connection to the Library and she thinks that is not actually true. She said the only people we have using audiovisual equipment to make presentations are those with whom we do have a direct connection, which does not include people of the general public who just want to make comments. She said while the SOTF seemed to indicate that this was an abridgement of rights, she said she does not think the Sunshine Ordinance or the Brown Act directs us that we are required to have that access to the general public. She said she does not feel like we are losing people's comments. She said they get plenty of comments that are articulated well enough for us to understand without the addition of audiovisual presentations. She said she does not feel suspicious that our City Librarian is not giving us full information from our City Attorney. She said she feels that this policy is a policy of the San Francisco Public Library Commission and no other commission is in a place to see how our policies are enacted. She said that is her understanding.

Commissioner Mall asked what other Commissions do.

Luis Herrera, City Librarian, said that Commissions that meet at City Hall that have the set up for this do allow this. He said there are others that do not.

Sue Blackman, Library Commission Secretary, said there are a couple of Commissions that do not meet at City Hall that do not allow use of the audiovisual equipment and there are others that do. She said it is just a policy of each Commission.

Commissioner Mall asked if the three minute allotment that we allow for public comment includes the time for the audiovisual set up.

President Gomez said the three minutes would include that during the course of the meeting, but she said any set up would have to happen with staff prior to the meeting.

Luis Herrera, City Librarian, read Administrative Code Section 67.15 (c) ". . . Each policy body shall adopt a rule providing that each person wishing to speak on an item before the body at a regular or special meeting shall be permitted to be heard once for up to three minutes. Time limits shall be applied uniformly to members of the public wishing to testify." He said it does not speak specifically to any other permeation to that but it does specify upwards to three minutes.

Commissioner Ono asked what is involved in the \$40,000 set up.

Luis Herrera, City Librarian, said the AV laptop is currently set up on the lectern on the stage and in order to connect it to the public lectern we would have to run cables underneath the auditorium to hook it up there. He said in addition it would require modifications to allow for the laptop to be accessible to anyone with physical disabilities. He said DPW did the estimate of the costs.

Commissioner Lee said there is a comment about the two slides and that they would be missed if they did not have the slides. He said he observed that when public comment was given the copies could be given to the Secretary and they could be included in the Minutes. He said if they are included in the Minutes they would be available on the website and there would be nothing hidden and we would not need to spend the \$40,000.

President Gomez asked about the 150 word summaries.

Sue Blackman, Library Commission Secretary, said the documents brought in by the public would be referred to in the Minutes but they would not be incorporated into the Minutes like the 150 word statements are.

Commissioner Randlett asked if there is anything that prevents printed materials being available by the public in the back of the auditorium.

Sue Blackman, Library Commission Secretary, said there is nothing to prevent the public from bringing copies of printed materials and placing them at the back of the auditorium.

Commissioner Randlett said this would be a low-tech solution that if somebody had a PowerPoint they wanted everyone in the forum to see that they could print it and leave it at the back of the auditorium and advise people that if they wanted to see it, it was available and copies could be made available to the Commissioners.

Commissioner Munson said when we have an audiovisual presentation it is at the request of the Commission or City Librarian and it is part of a program that is planned to inform the public. He said this is one of the ways we communicate about the basic business of the Commission. He said that the presenters have a contract with the Library. He said if members of the audience want to make comments have their three minutes to do so. He said the Commission spends a lot of time listening to public comment and some of it is helpful and some of it is not helpful. He said there can be different opinions about what is being said. He said if the Commission wants to reserve this means of communication that is reasonable. He said if the public presents all kinds of stuff, the meetings could get very long and could be confusing to the public. He said a person that disagrees can provide written material at the back of the room and talk at the podium for three minutes. He said we are trying to get the job done.

Motion: By Commissioner Randlett, seconded by Commissioner Mall given the concern that is being raised by the public that they do not have the ability to present materials through the audio visual equipment to all those at the meeting in some type of presentation form, that they do have the ability to bring materials in a printed form and that they use their time in public comment to be able to go through the materials and that if other people have questions they can ask the speakers at the end of the meeting in the back of the room.

Action: AYES 6-0: (Lee, Gomez, Mall, Munson, Ono, and Randlett.)



SUNSHINE ORDINANCE TASK FORCE Compliance and Amendments Committee CITY AND COUNTY OF SAN FRANCISCO MINUTES

Hearing Room 408
City Hall, 1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

September 17, 2013 – 4:00 PM

Regular Meeting

Members: Allyson Washburn (Chair),
Richard Knee, Kitt Grant

1. **Call to order, roll call, and agenda changes.**

The meeting was called to order at 4:17 p.m. Member Knee was noted absent. There was a quorum.

Speakers: None.

2. **Adoption of August 20, 2013, Regular Meeting Minutes.**

Chair Washburn, seconded by Member Grant, moved to ADOPT the August 20, 2013, minutes as corrected.

Speakers: None.

The motion PASSED by the following vote:

Ayes: 2 – Grant, Washburn

Absent: 1 – Knee

3. **File No. 13013: Hearing on the status of the Order of Determination of Ray Hartz Jr., against Luis Herrera City Librarian for allegedly abridging public comment by allowing selective accessibility of library audio visual equipment.**

Ray Hartz, Jr., (Complainant) stated the Library has not allowed access to its audio visual equipment, failing to comply with the Order of Determination. The Complainant stated the impact of having audio visual equipment could be damaging to the Library, when used to inform the public of the \$53 million the Library cannot account for. There were no speakers in support of the Complainant. Michael Jeffers, Library (Respondent) referred the committee to the Library's letter dated September 12, 2013, stating the Library

Commission voted 6-0 to bar use of Library-provided audio-visual equipment for public comment, because allowing members of the public to use audio-visuals during public comment would require the Library to expend significant resources to make the necessary accommodations to modify the technology set up that the Library uses. There were no speakers in support of the Respondent. A question-and-answer period followed. Respondent waived rebuttal opportunity. Complainant provided a rebuttal.

Member Grant, seconded by Chair Washburn, moved to refer the matter back to the Task Force with notice to be sent requiring the City Librarian to attend the Task Force's next proceedings on the matter; recommendation of referral to Ethics Commission.

Speakers: Male speaker discussed the San Francisco Library's budget of \$100.5 million.

The motion **PASSED** by the following vote:

Ayes: 2 – Grant, Washburn

Absent: 1 – Knee

4. **Public Comment.**

Ray Hartz said that compared to other commissions the Library Commission is not open and transparent; Male Speaker addressed the constitutional framework of First Amendment law.

5. **Administrator's Report.**

The Administrator presented the report.

Speakers: None.

6. **Announcements, Comments, Questions, and Future Agenda Items.**

Chair Washburn stated future agenda items may address amendments to the Sunshine Ordinance.

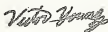
7. **ADJOURNMENT**

Chair Washburn, seconded by Member Grant, moved to ADJOURN.

There were no speakers. The motion **PASSED** without objection.

There being no further business, the Compliance and Amendments Committee adjourned at 4:53 p.m.

APPROVED: November 19, 2013

A handwritten signature in dark ink, appearing to read "Victor Young", written in a cursive style.

Victor Young, Administrator
Sunshine Ordinance Task Force



SUNSHINE ORDINANCE TASK FORCE CITY AND COUNTY OF SAN FRANCISCO AGENDA

Hearing Room 408
City Hall, 1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

October 2, 2013 – 4:00 PM

Regular Meeting

1. CALL TO ORDER, ROLL CALL, AND AGENDA CHANGES

Seat 1	<i>(Vacant)</i>	Seat 8	Todd David
Seat 2	Richard Knee <i>(Hold Over)</i>	Seat 9	Chris Hyland
Seat 3	Kitt Grant – Chair	Seat 10	Louise Fischer – Vice Chair
Seat 4	<i>(Vacant)</i>	Seat 11	Bruce Oka <i>(Hold Over)</i>
Seat 5	Allyson Washburn <i>(Hold Over)</i>		
Seat 6	David Pilpel	Ex-officio	Angela Calvillo
Seat 7	David Sims	Ex-officio	<i>(Vacant)</i>

- File No. 12058:** The Compliance and Amendments Committee has referred File No. 12058, Dominic Maionchi against Recreation and Park for allegedly failing to provide records requested pertaining to berthing contracts between the City and County of San Francisco and slip holders. *(approximately 30 minutes) (Discussion and Possible action) (attachment)*
- Public Comment:** Members of the public may address the Sunshine Ordinance Task Force (SOTF) on matters that are within SOTF's jurisdiction, but not on today's agenda. *(No Action) Public comment shall be taken at 5:00 pm or as soon thereafter as possible.*
- File No. 12059:** The Compliance and Amendments Committee has referred File No. 12059, Supreet Pabla, SEIU Local 1021 against Human Services Agency for allegedly failing to provide records requested relevant to the representation of the bargaining unit's employees. *(approximately 30 minutes) (Discussion and Possible action) (attachment)*
- File No. 13013:** The Compliance and Amendments Committee has referred File No. 13013, of Ray Hartz Jr., against Luis Herrera, City Librarian for allegedly abridging public comment by allowing selective accessibility of library audio visual equipment. *(approximately 30 minutes) (Discussion and Possible action) (attachment)*

6. **File No. 13012:** Complaint filed by Michael Fondanova, representing Glad Tidings Church against the Office of the Assessor-Recorder for allegedly failing to provide complete records associated with Glad Tidings Church and San Francisco Teen Challenge. *(attachment)*
 - (a) Determination of jurisdiction on complaint filed by Michael Fondanova, representing Glad Tidings Church against the Office of the Assessor-Recorder for allegedly failing to provide complete records associated with Glad Tidings Church and San Francisco Teen Challenge. *(approximately 5 minutes)*
(Discussion and Action)
 - (b) Hearing on complaint filed by Michael Fondanova, representing Glad Tidings Church against the Office of the Assessor-Recorder for allegedly failing to provide complete records associated with Glad Tidings Church and San Francisco Teen Challenge. *(approximately 45 minutes)* *(Discussion and Action)*
7. **File No. 13021:** Complaint filed by Patrick Monette-Shaw and Maria Rivero, MD against the Public Health Commission for allegedly violating Sunshine Ordinance §§ 67.7(a), 67.7(b), and 67.9(a); failing to notice members of the public, and noticing a deficient agenda. *(attachment)*
 - (a) Determination of jurisdiction on complaint filed Patrick Monette-Shaw and Maria Rivero, MD against the Public Health Commission for allegedly violating Sunshine Ordinance §§ 67.7(a), 67.7(b), and 67.9(a); failing to notice members of the public, and noticing a deficient agenda. *(approximately 5 minutes)*
(Discussion and Action)
 - (b) Hearing on complaint filed by Patrick Monette-Shaw and Maria Rivero, MD against the Public Health Commission for allegedly violating Sunshine Ordinance §§ 67.7(a), 67.7(b), and 67.9(a); failing to notice members of the public, and noticing a deficient agenda. *(approximately 45 minutes)* *(Discussion and Action)*
8. **File No. 13024:** Complaint filed by Mica Ringel against the Planning Department for allegedly failing to provide requested records associated with the proposed development of 480 Potrero Avenue. *(attachment)*
 - (a) Determination of jurisdiction on complaint filed Mica Ringel against the Planning Department for allegedly failing to provide requested records associated with the proposed development of 480 Potrero Avenue. *(approximately 5 minutes)*
(Discussion and Action)
 - (b) Hearing on complaint filed by Mica Ringel against the Planning Department for allegedly failing to provide requested records associated with the proposed development of 480 Potrero Avenue. *(approximately 45 minutes)* *(Discussion and Action)*

9. **Approval of Minutes from the March 6, 2013 Regular Meeting.** *(approximately 5 minutes) (Action) (attachment)*
10. **Approval of Minutes from the April 3, 2013 Regular Meeting.** *(approximately 5 minutes) (Action) (attachment)*
11. **Approval of Minutes from the May 1, 2013 Regular Meeting.** *(approximately 5 minutes) (Action) (attachment)*
12. **Approval of Minutes from the June 5, 2013 Regular Meeting.** *(approximately 5 minutes) (Action) (attachment)*
13. **Approval of Minutes from the July 9, 2013 Special Meeting.** *(approximately 5 minutes) (Action) (attachment)*
14. **Approval of Minutes from the August 7, 2013 Regular Meeting.** *(approximately 5 minutes) (Action) (attachment)*
15. **Approval of Minutes from the September 4, 2013 Regular Meeting.** *(approximately 5 minutes) (Action) (attachment)*
16. **Report: Compliance and Amendments Committee meeting of September 17, 2013.** *(approximately 5 minutes) (Discussion)*
17. **Report: Education, Outreach and Training Committee meeting of September 16, 2013.** *(approximately 5 minutes) (Discussion)*
18. **Administrator's Report.** *(approximately 5 minutes) (Discussion)*
19. **Announcements, Comments, Questions, and Future Agenda Items.** *(approximately 10 minutes) (Discussion and Action)*
20. **ADJOURNMENT**

Agenda Item Information

- Each item on the agenda may include: 1) Department or Agency cover letter and/or report; 2) Public correspondence; 3) Other explanatory documents. For more information concerning agendas, minutes, and meeting information, such as these documents, please contact the SOTF Clerk, City Hall, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco, CA 94102.

Audio recordings of the meeting of the Sunshine Ordinance Task Force are available at:
<http://www.sfbos.org/index.aspx?page=9811>

For information concerning Sunshine Ordinance Task Force please contact by e-mail sotf@sfgov.org or by calling (415) 554-7724.

Public Comment

Public Comment will be taken before or during the Committee's consideration of each agenda item. Speakers may address the Task Force for up to three minutes on that item. During General Public Comment, members of the public may address the Task Force on matters that are within the Task Force's jurisdiction and are not on the agenda. Any person speaking during a public comment period may supply a brief written summary of their comments, which shall, if no more than 150 words, be included in the official file.

Each member of the public will be allotted the same maximum number of minutes to speak as set by the Chair at the beginning of each item, excluding persons requested by the Task Force to make presentations.

Each member of the public who is unable to attend the public meeting or hearing may submit to the City, by the time the hearing begins, written comments regarding the subject of the meeting or hearing. These comments will be made a part of the official public record.

Hearing Procedures

- | | |
|---|----------------------|
| 1. Complainant presents his/her facts and evidence | 5 minutes |
| Other parties of Complainant present facts and evidence | Up to 3 minutes each |
| 2. City responds | 5 minutes |
| Other parties of City respond | Up to 3 minutes each |
| <i>Above total speaking times for Complainant and City to be the same.</i> | |
| 3. Matter is with the Task Force for discussion and questions. | |
| 4. Respondent and Complainant presents clarification/rebuttal | 3 minutes |
| 5. Matter is with the Task Force for motion and deliberation. | |
| 6. Public comment (Excluding Complainant & City response, witnesses) | Up to 3 minutes each |
| 7. Vote by Task Force (Public comment at discretion of chair on new motion and/or on new motion if vote fails.) | |

Note: Time must be adhered to. If a speaker is interrupted by questions, the interruption does not count against his/her time.

Disability Access

The hearing rooms in City Hall are wheelchair accessible. Assistive listening devices for the hearing rooms are available upon request with the SOTF Clerk. The nearest accessible BART station is Civic Center (Market/Grove/Hyde Streets). Accessible MUNI Metro lines are the F, J, K, L, M, N, T (exit at Civic Center or Van Ness Stations). MUNI bus lines also serving the area are the 5, 6, 9, 19, 21, 47, 49, 71, and 71L. For more information about MUNI accessible services, call (415) 701-4485. There is accessible parking in the vicinity of City Hall at Civic Center Plaza and adjacent to Davies Hall and the War Memorial Complex. Accessible curbside parking is available on Dr. Carlton B. Goodlett Place and Grove Street.

The following services are available on request 48 hours prior to the meeting; except for Monday meetings, for which the deadline shall be 4:00 p.m. of the last business day of the preceding week: For American sign language interpreters or the use of a reader during a meeting, a sound enhancement system, and/or alternative formats of the agenda and minutes, please contact the SOTF Clerk at (415) 554-7724 to make arrangements for the accommodation. Late requests will be honored, if possible.

In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City accommodate these individuals.

Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils, and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code) or to report a violation of the ordinance, contact: Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco, CA 94102; phone (415) 554-7724; fax (415) 554-7854; or email sotf@sfgov.org.

Citizens may obtain a free copy of the Sunshine Ordinance by printing Chapter 67 of the San Francisco Administrative Code on the Internet, at <http://www.sfbos.org/sunshine>.

Cell Phones, Pagers and Similar Sound-Producing Electronic Devices

The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing electronic devices (Chapter 67A of the San Francisco Administrative Code).

Lobbyist Registration and Reporting Requirements

Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Campaign & Governmental Conduct Code §2.100, et. seq.] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at: 25 Van Ness Avenue, Suite 220, San Francisco, CA 94102; telephone (415) 581-3100; fax (415) 252-3112; web site www.sfgov.org/ethics

File No. 13013

SOTF Item No. 5

CAC Item No. _____

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST

Sunshine Ordinance Task Force (SOTF)

Date: _____

Compliance and Amendments Committee (CAC)

Date: October 2, 2013

CAC/SOTF

<input checked="" type="checkbox"/>	<input type="checkbox"/>	Memorandum
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Order of Determination
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Complaint and Supporting documents
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Respondent's Response
<input type="checkbox"/>	<input type="checkbox"/>	Minutes
<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	

OTHER

<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____

Completed by: A. Ausberry Date 9/23/13

Completed by: _____ Date _____

*An asterisked item represents the cover sheet to a document that exceeds 75 pages.
The complete document is in the file.



ORDER OF DETERMINATION

August 19, 2013

DATE THE DECISION ISSUED

July 9, 2013

RAY HARTZ VS. CITY LIBRARIAN LUIS HERRERA (13013).

FACTS OF THE CASE

Ray Hartz ("Complainant") alleges that the City Librarian, Luis Herrera (the "Librarian") violated the Ordinance by failing to provide equal access to members of the public to Library audiovisual equipment for use during public comment at Library Commission meetings, thereby abridging their speech.

COMPLAINT FILED

On March 4, 2013, Complainant filed a complaint with the Task Force alleging a violation of Section 67.15 of the Ordinance.

HEARING ON THE COMPLAINT

On July 9, 2013, Complainant, Mr. Hartz appeared before the Task Force and presented his claim. Respondents Sue Blackman, Library Commission Secretary and Roberto Lombardi, Library Logistics presented the Library's defense.

The issue in the case is whether the Agency violated Section 67.15 of the Ordinance.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the testimony and evidence presented the Task Force finds the testimony of Complainant Mr. Hartz to be persuasive and finds that Sections 67.15(a) and 67.15(d) to be applicable in this case. The Task Force does not find testimony provided by the Library persuasive to this case.

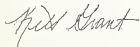
DECISION AND ORDER OF DETERMINATION

The Task Force finds that the Library Commission violated Section 67.15(a) and 67.15(b) of the Sunshine Ordinance for abridging public comment by not providing equal access to audio visual equipment by invited parties and the public. The Library Commission shall provide equal access to its audio visual equipment and appear before the Compliance and Amendments Committee on September 17, 2013 for a hearing on its compliance with this Order.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on July 9, 2013 by the following vote: (Sims/Oka)

Ayes: Knee, Washburn, Sims, David, Hyland, Oka, Fischer, Grant

Noes: Pilpel



Kitt Grant, Chair
Sunshine Ordinance Task Force

c: Jerry Threet, Deputy City Attorney
Ray Hartz, Jr., Complaint
Sue Blackman, Library Commission Secretary, Respondent
Roberto Lombardi, Library Logistics, Respondent

CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

JERRY THREET
Deputy City Attorney

DIRECT DIAL: (415) 554-3914
E-MAIL: jerry.threet@sfgov.org

MEMORANDUM

July 5, 2013

RAY HARTZ VS. CITY LIBRARIAN LUIS HERRERA (13013)

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING:

Complainant Ray Hartz ("Complainant") alleges that the City Librarian, Luis Herrera (the "Librarian") violated the Ordinance by failing to provide equal access to members of the public to Library audiovisual equipment for use during public comment at Library Commission meetings, thereby abridging their speech.

COMPLAINANT FILES COMPLAINT:

On March 4, 2013, Complainant filed a complaint with the Task Force alleging a violation of Section 67.15 of the Ordinance.

JURISDICTION

The Library clearly is a City Department and the Library Commission is a charter policy body. The Task Force therefore has jurisdiction to hear a public meetings complaint.

APPLICABLE STATUTORY SECTION(S):

- Section 67.15 governs the public comment at meetings of policy bodies.

APPLICABLE CASE LAW:

None.

ISSUES TO BE DETERMINED

Complainant: Complainant alleges that the Librarian violated the Ordinance by failing to provide equal access to members of the public to Library audiovisual equipment for use during public comment at Library Commission meetings, thereby abridging their speech. Complainant provides copies of emails to support his complaint.

Those emails show that on January 14, 2013, Complainant requested from the Librarian public access to Library audiovisual equipment for use during public comment at Commission meetings, noting that such equipment was used by groups that Complainant described as being approved by the Library. The 1/14/13 email also argued that denying access to the public to such

Memorandum

DATE: July 5, 2013
PAGE: 2
RE: Hartz v. Librarian (13013)

equipment would violated Section 67.15(d) of the Ordinance by abridging public comment. Complainant submitted another email with similar requests and arguments to the Librarian from January 24, 2013.

Complainant submitted a third email to Herrera dated February 14, 2013 in which it was noted that the Librarian had promised to "look into" the request, but that Complainant had never heard back. He also submitted an email response from the Librarian dated February 21, 2013, in which Herrera stated that Library staff continued to "look into the feasibility of making the necessary changes to the media set up at Koret Auditorium [] in order to accommodate your request."

Respondent: On March 5, 2013, the Librarian responded by letter to Complainant's request. In the 3/5/13 letter, the Librarian disputes Complainant's assertion that the Library violates the public meeting laws by failing to provide public access to Library audiovisual equipment. The letter asserts that no provision of the Ordinance or of the Brown Act requires that the Library provide such access. In particular, the letter asserts that Section 67.15 of the Ordinance does not prescribe any specific technological means by which the public must be given access to public comment. In addition, the letter asserts that the Library does not discriminate on the basis of viewpoint of members of the public making public comment.

The 3/5/13 letter also describes the efforts made to date by Library staff re the feasibility of providing audiovisual aids to members of the public for comment at Commission meetings, concluding that many options involved costs that the Library cannot absorb. The letter also notes that those currently allowed access to Library computers to use audiovisual equipment include only staff and those invited by the Library Commission or staff to make an official presentation to the Commission regarding an item on the Commission agenda. Otherwise, the Librarian asserts, the Commission does not allow access to its computers by members of the public, without regard for their viewpoint.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- Does Complainant assert that the Commission may not invite private parties to make official presentations on items on the agenda without providing equal time and access to members of the public who wish to respond to such presentations?
- Does Complainant assert that any member of the public making public comment on an item, as distinct from making an official presentation, is given access to Library audiovisual equipment in making that public comment?

LEGAL ISSUES/LEGAL DETERMINATIONS:

- Has the Librarian violated Section 67.15 of the Ordinance?

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

THE TASK FORCE FINDS THE ALLEGED VIOLATIONS TO BE TRUE OR NOT TRUE.

Memorandum

DATE: July 5, 2013
PAGE: 3
RE: Hartz v. Librarian (13013)

CHAPTER 67, SAN FRANCISCO ADMINISTRATIVE CODE (SUNSHINE ORDINANCE)**SEC. 67.15. PUBLIC TESTIMONY.**

(a) Every agenda for regular meetings shall provide an opportunity for members of the public to directly address a policy body on items of interest to the public that are within policy body's subject matter jurisdiction, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by Section 67.7(e) of this article. However, in the case of a meeting of the Board of Supervisors, the agenda need not provide an opportunity for members of the public to address the Board on any item that has already been considered by a committee, composed exclusively of members of the Board, at a public meeting wherein all interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the Board.

(b) Every agenda for special meetings at which action is proposed to be taken on an item shall provide an opportunity for each member of the public to directly address the body concerning that item prior to action thereupon.

(c) A policy body may adopt reasonable regulations to ensure that the intent of subdivisions (a) and (b) are carried out, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker. Each policy body shall adopt a rule providing that each person wishing to speak on an item before the body at a regular or special meeting shall be permitted to be heard once for up to three minutes. Time limits shall be applied uniformly to members of the public wishing to testify.

(d) A policy body shall not abridge or prohibit public criticism of the policy, procedures, programs or services of the City, or of any other aspect of its proposals or activities, or of the acts or omissions of the body, on the basis that the performance of one or more public employees is implicated, or on any basis other than reasonable time constraints adopted in regulations pursuant to subdivision (c) of this section.

(e) To facilitate public input, any agenda changes or continuances shall be announced by the presiding officer of a policy body at the beginning of a meeting, or as soon thereafter as the change or continuance becomes known to such presiding officer. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)



RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

2013 MAR -4 PM 12:29

SUNSHINE ORDINANCE TASK FORCE
1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102
Tel. (415) 554-7724; Fax (415) 554-7854
<http://www.sfgov.org/sunshine>

SUNSHINE ORDINANCE COMPLAINT

Complaint against which Department or Commission SAN FRANCISCO PUBLIC LIBRARY

Name of individual contacted at Department or Commission LUIS HERRERA, CITY LIBRARIAN

☐ Alleged violation public records access

☒ Alleged violation of public meeting. Date of meeting ALL LIBRARY COMMISSION

Sunshine Ordinance Section 67.15(d)
(If known, please cite specific provision(s) being violated)

Please describe alleged violation. Use additional paper if needed. Please attach any relevant documentation supporting your complaint.

DESPITE REPEATED REQUESTS FROM THE PUBLIC, CITY LIBRARIAN
LUIS HERRERA HAS CONTINUED TO DENY ACCESS TO MEMBERS
OF THE PUBLIC FOR USE OF AUDIOVISUAL EQUIPMENT REGULARLY
PROVIDED TO "APPROVED" GROUPS, THUS ABRIDGING PUBLIC COMMSNT

Do you want a public hearing before the Sunshine Ordinance Task Force? ☒ yes ☐ no
Do you also want a pre-hearing conference before the Complaint Committee? ☐ yes ☒ no

(Optional)¹ Name RAY W HARTZ, JR Address Mr. Ray W. Hartz Jr.
839 Leavenworth St. #304
San Francisco, CA 94109-6131

Telephone No. (415) 345-9144 E-Mail Address RWHARTZJR@SFGO.CA.GOV

Date MARCH 4, 2013 Signature Ray W Hartz Jr

I request confidentiality of my personal information. ☐ yes ☒ no

¹ NOTICE: PERSONAL INFORMATION THAT YOU PROVIDE MAY BE SUBJECT TO DISCLOSURE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND THE SUNSHINE ORDINANCE, EXCEPT WHEN CONFIDENTIALITY IS SPECIFICALLY REQUESTED. YOU MAY LIST YOUR BUSINESS/OFFICE ADDRESS, TELEPHONE NUMBER AND E-MAIL ADDRESS IN LIEU OF YOUR HOME ADDRESS OR OTHER PERSONAL CONTACT INFORMATION. Complainants can be anonymous as long as the complainant provides a reliable means of contact with the SOTF (Phone number, fax number, or e-mail address).

From: Luis Herrera (lherrera@sfpl.org)
To: rwhartzjr@sbcglobal.net;
Date: Thu, February 21, 2013 2:32:38 PM
Cc: sotf@sfgov.org; acastillo@sfpl.org; sue.a.blackman@sfgov.org; Jerry.Threet@sfgov.org; chaffeej@pacbell.net; libraryusers2004@yahoo.com;
Subject: RE: Audiovisual access at Library Commission meetings - reply

Mr. Hartz,

Staff is continuing to look into the feasibility of making the necessary changes in the media set up in the Library's Koret Auditorium set up in order to accommodate your request to allow for audio visual presentations from the public. I will provide a response to your request as soon as I have the information.

Thank you,

Luis

*Luis Herrera
City Librarian
San Francisco Public Library
100 Larkin Street, Room 600
San Francisco, CA 94102
415-557-4232 - Office
415-557-4239 - Fax
lherrera@sfpl.org*

From: Ray Hartz Jr [mailto:rwhartzjr@sbcglobal.net]
Sent: Thursday, February 14, 2013 12:10 PM
To: Luis Herrera
Cc: SOTF; Almer Castillo; sue.a.blackman@sfgov.org; SFCityAtty_Threet Jerry; James Chaffee; Peter Warfield
Subject: Fw: Audiovisual access at Library Commission meetings

Mr. Herrera,

It has been a month since my original request. Despite your commitment to "look into it," I've heard nothing since! And, obviously another Library Commission meeting has come and gone, with another just a week away, and members of the public have continued to be denied "access to the graphics" given to those of which you approve.

Ray W. Hartz, Jr.
Director San Francisco Open Government

— Forwarded Message —

From: Ray Hartz Jr <rwhartzjr@sbcglobal.net>
To: Luis Herrera <lherrera@sfpl.org>
Cc: "sue.a.blackman@sfgov.org" <sue.a.blackman@sfgov.org>; SOTF <sotf@sfgov.org>; James Chaffee <chaffeej@pacbell.net>; Peter Warfield <libraryusers2004@yahoo.com>; Jack Song <Jack.Song@sfgov.org>
Sent: Tue, January 29, 2013 8:43:57 AM
Subject: Re: Audiovisual access at Library Commission meetings

Mr. Herrera,

With the next Library Commission meeting on February 7th, I would like to know if there has been progress in your efforts to determine whether the public will be granted "equal access" to the audiovisual facilities provided to persons/organizations of whom the Library and Library Commission approve?

The facilities in the Koret Auditorium seem quite extensive! I'm not certain that it should be such a complicated arrangement that it would take much in effort and/or resources to provide the access to members of the public which is already provided to groups whose opinions you wish presented. Why is it that those who have "dissenting opinions" are denied the same level of assistance?

If groups like The Friends and the Civic Center Community Benefit District can provide you with materials to be shown, maybe members of the Public can submit audiovisual aids in the same manner, so that they can be included in the same way? Perhaps it comes down to the fact that you "approve" of their input and "disapprove" ours?

The presentations by "outside groups" are most often submitted as Microsoft PowerPoint documents. Perhaps if I submit my AV aids in the same fashion, not only can they be utilized in the meeting, but the Library Commission can include them in the public information packets sent to interested persons? If you can do it for those you like, public policy dictates that "equal access" be provided even to those of whom you disapprove, unless it is your intent to continue to "abridge public criticism of the policy, procedures, programs or services of the City, or of any other aspect of its proposals or activities, or of the acts or omission of the body, on the basis that the performance of one or more public employees is implicated..." This would, of course be a violation of Sec 67.15 Public Testimony of the Sunshine Ordinance.

Sincerely,

Ray W. Hartz, Jr.

Director, San Francisco Open Government

From: Ray Hartz Jr <rwartzjr@sbcglobal.net>
To: Luis Herrera <lherrera@sfgpl.org>
Cc: "sue.a.blackman@sfgov.org" <sue.a.blackman@sfgov.org>; SOTF <sotf@sfgov.org>; James Chaffee <chaffeej@pacbell.net>; Peter Warfield <libraryusers2004@yahoo.com>; Jack Song <Jack.Song@sfgov.org>
Sent: Mon, January 14, 2013 12:30:16 PM
Subject: Audiovisual access at Library Commission meetings

Mr. Herrera,

I would request that arrangements be made to allow members of the public the ability to use audiovisual

Ausberry, Andrea

From: Ray Hartz Jr [rwhartzjr@sbcglobal.net]
Sent: Thursday, March 14, 2013 6:17 AM
To: SOTF
Cc: Threet, Jerry
Subject: Fw: Audiovisual access at Library Commission meetings - reply - reply
Attachments: [Untitled].pdf

Dear Ms. Ausberry,

Please add this email chain, and the attached response, to the file for complaint #13013, Ray Hartz v. Luis Herrera. It contains the original request, subsequent correspondence, and the final reply to my request to the City Librarian, Luis Herrera.

Thank you,

Ray W. Hartz, Jr.
Director, San Francisco Open Government

----- Forwarded Message -----

From: Luis Herrera <lherrera@sfpl.org>
To: Ray Hartz Jr <rwhartzjr@sbcglobal.net>
Cc: SOTF <sotf@sfgov.org>; Almer Castillo <acastillo@sfpl.org>; "sue.a.blackman@sfgov.org" <sue.a.blackman@sfgov.org>; SFCityAtty_Threet Jerry <Jerry.Threet@sfgov.org>; James Chaffee <chaffeej@pacbell.net>; Peter Warfield <libraryusers2004@yahoo.com>; "ethics.commission@sfgov.org" <ethics.commission@sfgov.org>; "john.st.croix@sfgov.org" <john.st.croix@sfgov.org>
Sent: Wed, March 6, 2013 4:41:01 PM
Subject: RE: Audiovisual access at Library Commission meetings - reply - reply

Mr. Hartz,

Please see attached response regarding your request for audiovisual access at Library Commission meetings.

Luis Herrera, City Librarian

From: Ray Hartz Jr [mailto:rwhartzjr@sbcglobal.net]
Sent: Thursday, February 21, 2013 8:38 PM
To: Luis Herrera
Cc: SOTF; Almer Castillo; sue.a.blackman@sfgov.org; SFCityAtty_Threet Jerry; James Chaffee; Peter Warfield; ethics.commission@sfgov.org; john.st.croix@sfgov.org
Subject: Re: Audiovisual access at Library Commission meetings - reply

Mr. Herrera,

I have made it very, very clear that whatever process you use to incorporate the graphics of those of which you approve (The Friends, the Community Benefit District, etc.) is something I can work with. If they send you Microsoft Powerpoint documents by email to include them in the projected images, I can do the same. I'm not asking for special changes, just the ability to access the graphics in the same way you allow other to. You seem to want to make this a very complicated request, when it's something you

do (and have been doing) for people at almost every meeting of the Library Commission. You simply want to deny the same access to me and others because you don't like what we say! That is suppressing dissenting opinion, which is forbidden under both the Sunshine Ordinance and the Brown Act.

Ray W. Hartz, Jr.
Director, San Francisco Open Government

From: Luis Herrera <lherrera@sfpl.org>
To: Ray Hartz Jr <rwhartzjr@sbcglobal.net>
Cc: SOTF <sotf@sfgov.org>; Almer Castillo <acastillo@sfpl.org>; "sue a blackman@sfgov.org" <sue.a.blackman@sfgov.org>; SFCityAtty_Threet Jerry <Jerry.Threet@sfgov.org>; James Chaffee <chaffeej@pacbell.net>; Peter Warfield <libraryusers2004@yahoo.com>
Sent: Thu, February 21, 2013 2:32:41 PM
Subject: RE: Audiovisual access at Library Commission meetings - reply

Mr. Hartz,

Staff is continuing to look into the feasibility of making the necessary changes in the media set up in the Library's Koret Auditorium set up in order to accommodate your request to allow for audio visual presentations from the public. I will provide a response to your request as soon as I have the information.

Thank you,

Luis

*Luis Herrera
City Librarian
San Francisco Public Library
100 Larkin Street, Room 600
San Francisco, CA 94102
415-557-4232 - Office
415-557-4239 - Fax
lherrera@sfpl.org*

From: Ray Hartz Jr [<mailto:rwhartzjr@sbcglobal.net>]
Sent: Thursday, February 14, 2013 12:10 PM
To: Luis Herrera
Cc: SOTF; Almer Castillo; sue.a.blackman@sfgov.org; SFCityAtty_Threet Jerry; James Chaffee; Peter Warfield
Subject: Fw: Audiovisual access at Library Commission meetings

Mr. Herrera,

It has been a month since my original request. Despite your commitment to "look into it," I've heard nothing since! And, obviously another Library Commission meeting has come and gone, with another just a week away, and members of the public have continued to be denied "access to the graphics" given to those of which you approve.

Ray W. Hartz, Jr.
Director San Francisco Open Government

----- Forwarded Message -----

From: Ray Hartz Jr <rwhartzjr@sbcglobal.net>

To: Luis Herrera <lherrera@sfppl.org>

Cc: "sue.a.blackman@sfgov.org" <sue.a.blackman@sfgov.org>; SOTF <sotf@sfgov.org>; James Chaffee <chaffeej@pacbell.net>; Peter Warfield <libraryusers2004@yahoo.com>; Jack Song <Jack.Song@sfgov.org>

Sent: Tue, January 29, 2013 8:43:57 AM

Subject: Re: Audiovisual access at Library Commission meetings

Mr. Herrera,

With the next Library Commission meeting on February 7th, I would like to know if there has been progress in your efforts to determine whether the public will be granted "equal access" to the audiovisual facilities provided to persons/organizations of whom the Library and Library Commission approve?

The facilities in the Koret Auditorium seem quite extensive! I'm not certain that it should be such a complicated arrangement that it would take much in effort and/or resources to provide the access to members of the public which is already provided to groups whose opinions you wish presented. Why is it that those who have "dissenting opinions" are denied the same level of assistance?

If groups like The Friends and the Civic Center Community Benefit District can provide you with materials to be shown, maybe members of the Public can submit audiovisual aids in the same manner, so that they can be included in the same way? Perhaps it comes down to the fact that you "approve" of their input and "disapprove" ours?

The presentations by "outside groups" are most often submitted as Microsoft PowerPoint documents. Perhaps if I submit my AV aids in the same fashion, not only can they be utilized in the meeting, but the Library Commission can include them in the public information packets sent to interested persons? If you can do it for those you like, public policy dictates that "equal access" be provided even to those of whom you disapprove, unless it is your intent to continue to "abridge public criticism of the policy, procedures, programs or services of the City, or of any other aspect of its proposals or activities, or of the acts or omission of the body, on the basis that the performance of one or more public employees is implicated...." This would, of course be a violation of Sec 67.15 Public Testimony of the Sunshine Ordinance.

Sincerely,

Ray W. Hartz, Jr.

Director, San Francisco Open Government

From: Ray Hartz Jr <rwhartzjr@sbcglobal.net>

To: Luis Herrera <lherrera@sfppl.org>

Cc: "sue.a.blackman@sfgov.org" <sue.a.blackman@sfgov.org>; SOTF <sotf@sfgov.org>; James Chaffee <chaffeej@pacbell.net>; Peter Warfield <libraryusers2004@yahoo.com>; Jack Song <Jack.Song@sfgov.org>

Mr. Herrera,

I would request that arrangements be made to allow members of the public the ability to use audiovisual aids to support their public comments.

In the Sunshine Ordinance, under section 67.15 PUBLIC TESTIMONY, section (d) "A policy body shall not abridge or prohibit public criticism of the policy, procedures, programs or services of the City..."

While the Library and the Library Commission allow use of audiovisual equipment to groups and persons of which you "approve," you have continued to deny access to those who have "critical comments." There is a well established animosity toward certain members of the public who have "critical comment." The President of the Library Commission has been found to have illegally abridged public comment by the Sunshine Ordinance Task Force. She was subsequently found by the San Francisco Ethics Commission to have engaged in unacceptable behavior in this regard and recommended for removal.

I, and other members of the public, have had public comment censored and excluded from the official record of public meetings. It has only been through a long and drawn-out process that my public testimony has been accurately represented in the official record, by inclusion of my submitted 150 word summaries. You have, in fact, continued to treat other members of the public in ways that essentially censor their public comments.

You, have been found to have withheld public records, which you knew were disclosable. This matter has been referred to the Ethics Commission, and, I look forward to having the opportunity to present my case there and hear your response. Although, I have to admit, that I believe you will send Ms. Blackman to try and justify your actions!

All other City boards and commission, in whose meetings audiovisual aids are used, provide access to the public to that equipment. Although the facilities at the Library are available, you only deny them to members of the public who are "critical" of the operations of the Library and/or Library Commission. It is my contention that this is done to limit the ability of members of the public to make effective public comment, and, as such, abridges public criticism.

Sincerely,

Ray W. Hartz, Jr.
Director, San Francisco Open Government

Official SFPL Use Only

Official SFPL use only

Official SFPL Use Only

Ausberry, Andrea

From: Ray Hartz Jr [rwhartzjr@sbcglobal.net]
Sent: Wednesday, June 26, 2013 3:37 PM
To: SOTF
Subject: Fw: Audiovisual access at Library Commission meetings - reply - reply
Attachments: [Untitled].pdf

Dear Ms. Ausberry,

Please include the following email chain in the file for Case #13013, Ray Hartz v Luis Herrera, City Librarian.

I would like the Task Force members to note that I made it clear that I was not expecting special treatment, but was expecting equal treatment.

I offered to provide documents in Microsoft PowerPoint, which is what I believe all of their "invited" participants use, and that option was ignored in his response.

Mr. Herrera wants to make this seem like an impossible request by claiming a need for huge expenditures, which is not the case!

He only wants to deny access based upon "viewpoint discrimination," allowing those he invites (read approves) access and denying the same to those who chose to attend (read disapproves.)

This is not only a clear violation of the Sunshine Ordinance, but I believe, the Brown Act.

Mr. Herrera has already been found in violation for withholding public records by the Task Force and referred to the Board of Supervisors. This is truly a "pattern of behavior" designed to censor and/or abridge public comment!

Sincerely,

Ray W. Hartz, Jr.
Director, San Francisco Open Government

----- Forwarded Message -----

From: Luis Herrera <lherrera@sfppl.org>
To: Ray Hartz Jr <rwhartzjr@sbcglobal.net>
Cc: SOTF <sotf@sfgov.org>; Almer Castillo <acastillo@sfppl.org>; "sue.a.blackman@sfgov.org" <sue.a.blackman@sfgov.org>; SFCityAtty_Threet Jerry <Jerry.Threet@sfgov.org>; James Chaffee <chaffeej@pacbell.net>; Peter Warfield <libraryusers2004@yahoo.com>; "ethics.commission@sfgov.org" <ethics.commission@sfgov.org>; "john.st.croix@sfgov.org" <john.st.croix@sfgov.org>
Sent: Wednesday, March 6, 2013 4:40 PM
Subject: RE: Audiovisual access at Library Commission meetings - reply - reply

Mr. Hartz,

Please see attached response regarding your request for audiovisual access at Library Commission meetings.

Luis Herrera, City Librarian

From: Ray Hartz Jr [mailto:rwartzjr@sbcglobal.net]
Sent: Thursday, February 21, 2013 8:38 PM
To: Luis Herrera
Cc: SOTF; Almer Castillo; sue.a.blackman@sfgov.org; SFCityAtty_Threet Jerry; James Chaffee; Peter Warfield; ethics.commission@sfgov.org; john.st.croix@sfgov.org
Subject: Re: Audiovisual access at Library Commission meetings - reply

Mr. Herrera,

I have made it very, very clear that whatever process you use to incorporate the graphics of those of which you approve (The Friends, the Community Benefit District, etc.) is something I can work with. If they send you Microsoft Powerpoint documents by email to include them in the projected images, I can do the same. I'm not asking for special changes, just the ability to access the graphics in the same way you allow other to. You seem to want to make this a very complicated request, when it's something you do (and have been doing) for people at almost every meeting of the Library Commission. You simply want to deny the same access to me and others because you don't like what we say! That is suppressing dissenting opinion, which is forbidden under both the Sunshine Ordinance and the Brown Act.

Ray W. Hartz, Jr.
Director, San Francisco Open Government

From: Luis Herrera <lherrera@sfp.org>
To: Ray Hartz Jr <rwartzjr@sbcglobal.net>
Cc: SOTF <sotf@sfgov.org>; Almer Castillo <acastillo@sfp.org>; "sue.a.blackman@sfgov.org" <sue.a.blackman@sfgov.org>; SFCityAtty_Threet Jerry <Jerry.Threet@sfgov.org>; James Chaffee <chaffeej@pachell.net>; Peter Warfield <libraryusers2004@yahoo.com>
Sent: Thu, February 21, 2013 2:32:41 PM
Subject: RE: Audiovisual access at Library Commission meetings - reply

Mr. Hartz,

Staff is continuing to look into the feasibility of making the necessary changes in the media set up in the Library's Koret Auditorium set up in order to accommodate your request to allow for audio visual presentations from the public. I will provide a response to your request as soon as I have the information.

Thank you,

Luis

*Luis Herrera
City Librarian
San Francisco Public Library
100 Larkin Street, Room 600
San Francisco, CA 94102
415-557-4232 - Office
415-557-4239 - Fax
lherrera@sfp.org*

From: Ray Hartz Jr [mailto:rwartzjr@sbcglobal.net]
Sent: Thursday, February 14, 2013 12:10 PM
To: Luis Herrera

Cc: SOTF; Almer Castillo; sue.a.blackman@sfgov.org; SFCityAtty_Threet Jerry; James Chaffee; Peter Warfield
Subject: Fw: Audiovisual access at Library Commission meetings

Mr. Herrera,

It has been a month since my original request. Despite your commitment to "look into it," I've heard nothing since! And, obviously another Library Commission meeting has come and gone, with another just a week away, and members of the public have continued to be denied "access to the graphics" given to those of which you approve.

Ray W. Hartz, Jr.
Director San Francisco Open Government

----- Forwarded Message -----

From: Ray Hartz Jr <rwhartzjr@sbcglobal.net>

To: Luis Herrera <lherrera@sfpd.org>

Cc: sue.a.blackman@sfgov.org <sue.a.blackman@sfgov.org>; SOTF <sotf@sfgov.org>; James Chaffee <chaffeej@pacbell.net>;

Peter Warfield <libraryusers2004@yahoo.com>; Jack Song <Jack.Song@sfgov.org>

Sent: Tue, January 29, 2013 8:43:57 AM

Subject: Re: Audiovisual access at Library Commission meetings

Mr. Herrera,

With the next Library Commission meeting on February 7th, I would like to know if there has been progress in your efforts to determine whether the public will be granted "equal access" to the audiovisual facilities provided to persons/organizations of whom the Library and Library Commission approve?

The facilities in the Koret Auditorium seem quite extensive! I'm not certain that it should be such a complicated arrangement that it would take much in effort and/or resources to provide the access to members of the public which is already provided to groups whose opinions you wish presented. Why is it that those who have "dissenting opinions" are denied the same level of assistance?

If groups like The Friends and the Civic Center Community Benefit District can provide you with materials to be shown, maybe members of the Public can submit audiovisual aids in the same manner, so that they can be included in the same way? Perhaps it comes down to the fact that you "approve" of their input and "disapprove" ours?

The presentations by "outside groups" are most often submitted as Microsoft PowerPoint documents. Perhaps if I submit my AV aids in the same fashion, not only can they be utilized in the meeting, but the Library Commission can include them in the public information packets sent to interested persons? If you can do it for those you like, public policy dictates that "equal access" be provided even to those of whom you disapprove, unless it is your intent to continue to "abridge public criticism of the policy, procedures, programs or services of the City, or of any other aspect of its proposals or activities, or of the acts or omission of the body, on the basis that the performance of one or more public employees is implicated..." This would, of course be a violation of **Sec 67.15 Public Testimony** of the Sunshine Ordinance.

Sincerely,

Ray W. Hartz, Jr.
Director, San Francisco Open Government

From: Ray Hartz Jr <rwartzjr@sbcglobal.net>
To: Luis Herrera <lherrera@sfp.org>
Cc: "sue.a.blackman@sfgov.org" <sue.a.blackman@sfgov.org>; SOTF <sotf@sfgov.org>; James Chaffee <chaffeej@pacbell.net>; Peter Warfield <libraryusers2004@yahoo.com>; Jack Song <Jack.Song@sfgov.org>
Sent: Mon, January 14, 2013 12:30:16 PM
Subject: Audiovisual access at Library Commission meetings

Mr. Herrera,

I would request that arrangements be made to allow members of the public the ability to use audiovisual aids to support their public comments.

In the Sunshine Ordinance, under section 67.15 PUBLIC TESTIMONY, section (d) "A policy body shall not abridge or prohibit public criticism of the policy, procedures, programs or services of the City..."

While the Library and the Library Commission allow use of audiovisual equipment to groups and persons of which you "approve," you have continued to deny access to those who have "critical comments." There is a well established animosity toward certain members of the public who have "critical comment." The President of the Library Commission has been found to have illegally abridged public comment by the Sunshine Ordinance Task Force. She was subsequently found by the San Francisco Ethics Commission to have engaged in unacceptable behavior in this regard and recommended for removal.

I, and other members of the public, have had public comment censored and excluded from the official record of public meetings. It has only been through a long and drawn-out process that my public testimony has been accurately represented in the official record, by inclusion of my submitted 150 word summaries. You have, in fact, continued to treat other members of the public in ways that essentially censor their public comments.

You, have been found to have withheld public records, which you knew were disclosable. This matter has been referred to the Ethics Commission, and, I look forward to having the opportunity to present my case there and hear your response. Although, I have to admit, that I believe you will send Ms. Blackman to try and justify your actions!

All other City boards and commission, in whose meetings audiovisual aids are used, provide access to the public to that equipment. Although the facilities at the Library are available, you only deny them to members of the public who are "critical" of the operations of the Library and/or Library Commission. It is my contention that this is done to limit the ability of members of the public to make effective public comment, and, as such, abridges public criticism.

Sincerely,

Ray W. Hartz, Jr.
Director, San Francisco Open Government

Official SFPL Use Only

Official SFPL use only

Official SFPL Use Only

Official SFPL use only



San Francisco Public Library

March 5, 2013

Mr. Ray Hartz
839 Leavenworth Street, Apt. 304
San Francisco, CA 94109-6131
Via email: rwhartzin@sbcglobal.net

Dear Mr. Hartz,


On January 14, 2013, you requested that the San Francisco Public Library (SFPL) allow members of the public to use audiovisual aids to support their public comments. You assert that SFPL denies the public access to the audiovisual aids in an effort to abridge public criticism. You also assert that such action violates San Francisco Administrative Code Section 67.15, which prohibits a policy body from "abridg[ing] or prohibit[ing] public criticism of the policy, procedures, programs or services of the City."

I respectfully disagree. The Commission does not discriminate on the basis of viewpoint in allowing members to exercise their right to address public comments to the Commission. Further, neither the Brown Act nor the Sunshine Ordinance gives members of the public the right of access during public comment to SFPL audiovisual technology. In particular, Administrative Code Section 67.15, which specifically addresses the right to public comment in San Francisco, does not prescribe the method, means, or mode of technology that SFPL must allow the public to use during public comment.

Library staff have explored options to accommodate your request. We looked at providing the public with a basic transparency device that uses an overhead projector. However, this option was not viable as the projector could not project the image on the auditorium stage screen to allow the public and commissioners to view. The only option available for audio visual presentations at the SFPL Commission meetings would require reconfiguring the department's information technology set up to allow for the public to download their presentations from a laptop from the public lecturer. This option would require the library department to incur additional expense and resources. Specifically, we would need to enlist the services of engineering staff and a construction contractor to modify the cable set up, including running cables under the stage to the public lecturer, where members of the public would place a laptop or use a jump drive to connect to the stage podium and projection room. Additional equipment costs to provide the interface for the laptop and modifying the lectern to accommodate the equipment and ensure proper ADA set up would also be necessary. Preliminary cost estimates from our facilities department working with the Department of Public Works places that cost at a minimum of \$40,000. The Library Department does not have the resources to incur these additional costs.

Currently, the Commission allows only SFPL staff and individuals or organizations invited to make presentations to the Commission to use the Library's computers to connect to its audio visual equipment. For example, the architects as part of the Bond Managers report, other City departments or the Friends of the Library may have, on occasion, connected their laptops or preloaded materials to SFPL audiovisual equipment for presentations that the Commission has invited them to make for items that the Commission has placed on its agenda. However, SFPL staff have expended resources to load the materials into the Library's information processing system ahead of time. Where the Commission invites private parties to make presentations, SFPL expends its resources as necessary to effect those presentations. Otherwise, the department uniformly declines to allow members of the public, without regard to their viewpoint, to connect their laptops or external devices to the department's audiovisual facilities because of the additional expense and resources discussed above.

Sincerely,


Luis Herrera
City Librarian

September 12, 2013

Members, Sunshine Ordinance Task Force

Via email soft@sfgov.org

Re: Complaint #13013, Ray Hartz v. City Librarian Luis Herrera
Complaint #13056, Ray Hartz v. City Librarian Luis Herrera

Dear Chairman Grant and Task Force Members:

This letter responds to the Sunshine Ordinance Task Force's (SOTF) ruling at its July 9, 2013 meeting regarding Complaint #13013, Ray Hartz v. City Librarian Luis Herrera and Complaint #13056, Ray Hartz v. City Librarian Luis Herrera.

The Order of Determination was issued on August 19, 2013 ruling that the Library Commission violated Section 67.15(a) and 67.15(b) of the Sunshine Ordinance for abridging public comment by not providing equal access to audio visual equipment by invited parties and the public. It further states that the Library Commission shall provide equal access to its audio visual equipment and appear before the Compliance and Amendments Committee on September 17, 2013 for a hearing on its compliance with the Order.

The Library Commission met on August 15, 2013 and voted 6-0 to not allow the use of audio visual equipment for public comment because allowing members of the public to use audio visuals during public comment would require SFPL to expend significant resources to make the necessary accommodations to modify the technology set up that SFPL uses. The Commission made it clear that the public could bring printed copies of presentations to the Commission and have them available at the back of the room. (See attached Draft Library Commission Minutes for August 15, 2013).

The Library explored various options that would allow the public to use the audio visuals during public comment, including providing the public with a basic transparency device that uses an overhead projector. This option was not viable as the projector could not project the image on the auditorium screen to allow the public and commission to view. The only option available for audio visual presentations at the Library Commission meeting would require reconfiguring the department's information technology set up to allow for the public to download their presentations from a laptop from the public. This option would require the Library to retain the services of engineering staff and a construction contractor to modify the cable set up, including running cables under the stage podium and projection room. Additional equipment costs to provide the interface for the laptop and modifying the lectern to accommodate the equipment and ensure proper ADA set up would be necessary. Preliminary cost estimates from our facilities department working with the Department of Public Works places that cost at a minimum of \$40,000, which the Library does not have.

The Commission does not discriminate on the basis of viewpoint in allowing members of the public to exercise their right to address public comments to the Commission. The Library Commission allows only SFPL staff and individuals or organizations invited to make presentations to the Commission to use the Library's computers to connect its audio visual equipment. This policy is not based on viewpoint. Additionally, the City Attorney's Office has advised the Commission that neither the Brown Act nor the Sunshine Ordinance gives members of the public the right of access during public comment to SFPL audiovisual technology. In particular, Administrative Code Section 67.15 which specifically addresses the right to public comments in San Francisco does not prescribe the method, means or mode of technology that SFPL must allow the public to use during public comment.

We hope that this resolves the Task Force's concerns about this matter. Thank you for your time and consideration.

Sincerely,

Sue Blackman
Library Commission Secretary/Custodian of Records

cc: Luis Herrera, City Librarian
Ray Hartz
Jewelle Gomez, Library Commission President

Draft Library Commission Minutes August 15, 2013

AGENDA ITEM 2. USE OF AUDIO VISUAL EQUIPMENT BY THE PUBLIC

Luis Herrera, City Librarian, referred to a memo in the Commissioner's packet and explained the background of the item. He said there is also a letter to Mr. Ray Hartz dated March 5, 2013 and a copy of Section 67.15 Public Testimony of the Sunshine Ordinance. He said Mr. Hartz had requested that members of the public be able to use audio visual aids to support public comment. His request was declined by the Library and he subsequently filed a complaint with the SOTF. He said Mr. Hartz asserts that the Library denies public access to audiovisual aids to abridge public criticism and he also asserts that such action violates San Francisco Administrative Code Section 67.15. He said the Library did explore options to accommodate his request including providing the public with a basic transparency device that uses an overhead projector. He said this option was not feasible as the projector could not project the image on the auditorium screen to allow the public and commission to view. He said the only option available for audio visual presentations at the Library Commission meeting would require reconfiguring the Library's information technology set up to allow the public to download their presentations from a laptop. He said this option would require expenditure of additional expenses and resources. He said engineering staff and a construction contractor would need to modify the cable set up, including running cables under the stage podium and into the projection room. He said the Library conferred with the Department of Public Works to ensure proper ADA setup and the preliminary cost estimate range up to \$40,000 which is not included in this year's budget. He said the Library Commission only allows SFPL staff and individuals or organizations invited to make presentations to the Commission to use the Library's computers to connect to its audio visual equipment. He said for these reasons Mr. Hartz' request was declined. He said the SOTF heard the complaint on July 9 and found the Library in violation of Administrative Code Section 67.15 for abridging public comment by not providing access to the audiovisual equipment. He said they referred the matter to the SOTF Compliance and Amendments Committee. He said the item before you will give the Commission the opportunity to discuss and possibly take action on this matter. The Commission may choose to allow members of the public to use audio visuals during public comment by supporting additional expenses and resources. He said the City Attorney has opined that whether the Library provides the public with access to the audio visual equipment is a policy call because neither the Brown Act nor the Sunshine Ordinance prescribes the method, means, or mode of technology that SFPL must allow the public to use during public comment.

Public Comment

An anonymous citizen said this is a situation where Stacey Aldrich the State Librarian appeared before you last February and she described how communication is becoming more digital and visual and it is necessary in order to allow full discourse. He said you have in front of you a copy of the law and two letters from the City Librarian. He asked where are the letters from Ray Hartz, where is the complaint, where are the deliberations from the Sunshine Ordinance Task Force or the SOTF's Order of Determination. He said you have none of that

in front of you nor do you have anything from the City Attorney that supports Luis Herrera's characterization of their opinion. He said this is a basic right. He said the law doesn't say that you have to provide visual access. He said what the law says is that you have to provide equality and equal treatment in a public forum. He said this is a situation where this Library Commission can just say no. He said you have not been given a draft resolution so that you can see what it would look like to approve or reject. He said you have not been given any of the real information about why this is not only good policy but the law and why the SOTF approved it. He said the Commission should simply say that you are going to reject this one-sided abuse of the Commission's intelligence and approve the citizen's access to the graphics.

The following written summary was provided by the speaker, anonymous citizen. The content is neither generated by, nor subject to approval or verification of accuracy by the Library Commission.

Stop the Hate, Stop the Ignorance – Don't give money to, or accept money from the Friends of the Library. The mot de Coulter is wonderfully appropriate now. The State Librarian Stacey Aldrich appeared before you in February, 2012, and described how communication is becoming more digital and visual, and that is necessary to modern discourse. You have two letters from the City Librarian. Where are the letters from Mr. Hartz, the Sunshine complaint, the Sunshine Ordinance Task Force's deliberations and determination, or confirmation of the City Attorney's opinion? The law doesn't say you have to provide visual access. It says you have to provide equal treatment in a public forum. You have not even been given a draft resolution to approve. You have no information on why the Sunshine Task Force approved it. Just say, No. You can reject this one-sided abuse of your intelligence and approve the citizen's access to graphics.

Ray Hartz, Director San Francisco Open Government, said he knows what to expect because there will be claims that you need to spend more than \$40,000 to comply, that there are security risks, that the law does not require you to allow access, ad nauseam. He said what he submitted was two PowerPoint slides and you will see in your packets that there are two or three presentations all done in the same format and that is all it takes to include his input. He said you don't have to spend \$40,000, if you have a security risk print the documents out and scan them with your own equipment. He said these are two quotes from the authors Frank Herbert and Upton Sinclair. He said if that isn't censorship, I don't know what is. He said as he said at the SOTF hearing, all he is asking for is equal treatment. He said include his Microsoft PowerPoint slides just as you do for those of whom you approve. He said perhaps it would be more accurate to say for those who approve of you. He said it is bad enough that you have to let us speak and you can't censor what we say. He said your fear is that we would be even more effective. He said he knows there is one question that will not be asked or if it is asked it will not be answered. He said why does the Commission want so badly to restrict what we have to say. He said the Commission is afraid we will show charts with real numbers showing that out of \$53 Million what the library got was 6% or 8% of the money. He said we have a group that raises money for the library but really raised the money to spend on themselves.

The following written summary was provided by the speaker, Ray Hartz. The content is neither generated by, nor subject to approval or verification of accuracy by the Library Commission.

How I expect this "discussion" to go: claims that you need to spend more than \$40,000 to comply, that there are security risks, that the law does not require you to allow access, ad nauseam. "Straw men" set up to allow you to "pretend to discuss" restrictions on public comment. As I said at the SOTF hearing: all I'm asking for is equal treatment! Include my Microsoft PowerPoint slides just as you do for those who you approve. Perhaps it would be more accurate to say for those who approve of you? It's bad enough that you have to let us speak and you can't censor what we say! Your fear is that we would be even more effective! I know there is one question that will not be asked, or if it is will not be answered: why do you want so badly to restrict what we say?

Peter Warfield, Library Users Association, said this is both a sad moment and an opportunity for this Library Commission to show some level of responsibility and of legal behavior. He said he expects no action and very little real discussion. He said the SOTF heard Mr. Hartz' complaint and the Library's defense of its actions in refusing to provide PowerPoint displays for the public. He said the Library brought their head of Facilities and the Library was practically laughed out of the room. He said the Task Force members were openly skeptical and scoffing and counting reasons given by the Library. He said the request Mr. Hartz has made is for the same treatment as other people that you have presenting including others like the Friends that have no connection with the Library. He said there would be no requirement whatsoever for any change of equipment. He said Mr. Hartz pointed out that if you are worried about security issues you can simply print out the document, scan it and include it in what you present to the public when the public speaks. He said even if what he thinks is a preposterously inflated number of \$40,000, what is equal access worth for democracy. He said you spend money on ADA requirements and you spend money on these microphones. He said \$40,000 is a speck of dust compared to your \$100 Million budget this year. He said the City Librarian could foot the bill himself with just his own discretionary fund that he gets from the Friends.

Robert B. Livingston said he has a lot of problems with this Library and there are three things he would ask for. He said first thing is anybody that comes to this Library gets on the elevator and they discover the buttons aren't lit so they have to guess which one is opening for them. He said fix the buttons in the elevator. He said second when you get out on the third floor you look out the window and you see a ledge out there with a crushed can and wet newspaper that has been there for God knows how long and it seems like people working in this environment would notice something like that and have it cleaned off. He said the last thing is if you go into any Department Store multi-level you find a menu on the inside of the elevator that directs you to what is on each floor.

Commission Discussion

President Gomez said thank you to staff for framing our discussion and giving us the information that we are able to consider. She said she would make a correction to one thing that was said by a member of the public that these particular three people who are lobbying for this audiovisual access indicate that everyone else from the public has the opportunity, including the Friends who do not have a direct connection to the Library and she thinks that is not actually true. She said the only people we have using audiovisual equipment to make presentations are those with whom we do have a direct connection, which does not include people of the general public who just want to make comments. She said while the SOTF seemed to indicate that this was an abridgement of rights, she said she does not think the Sunshine Ordinance or the Brown Act directs us that we are required to have that access to the general public. She said she does not feel like we are losing people's comments. She said they get plenty of comments that are articulated well enough for us to understand without the addition of audiovisual presentations. She said she does not feel suspicious that our City Librarian is not giving us full information from our City Attorney. She said she feels that this policy is a policy of the San Francisco Public Library Commission and no other commission is in a place to see how our policies are enacted. She said that is her understanding.

Commissioner Mall asked what other Commissions do.

Luis Herrera, City Librarian, said that Commissions that meet at City Hall that have the set up for this do allow this. He said there are others that do not.

Sue Blackman, Library Commission Secretary, said there are a couple of Commissions that do not meet at City Hall that do not allow use of the audio visual equipment and there are others that do. She said it is just a policy of each Commission.

Commissioner Mall asked if the three minute allotment that we allow for public comment includes the time for the audiovisual set up.

President Gomez said the three minutes would include that during the course of the meeting, but she said any set up would have to happen with staff prior to the meeting.

Luis Herrera, City Librarian, read Administrative Code Section 67.15 (c) ". . . Each policy body shall adopt a rule providing that each person wishing to speak on an item before the body at a regular or special meeting shall be permitted to be heard once for up to three minutes. Time limits shall be applied uniformly to members of the public wishing to testify." He said it does not speak specifically to any other permeation to that but it does specify upwards to three minutes.

Commissioner Ono asked what is involved in the \$40,000 set up.

Luis Herrera, City Librarian, said the AV laptop is currently set up on the lectern on the stage and in order to connect it to the public lectern we would have to run cables underneath the auditorium to hook it up there. He said in addition it would require modifications to allow for the laptop to be accessible to anyone with physical disabilities. He said DPW did the estimate of the costs.

Commissioner Lee said there is a comment about the two slides and that they would be missed if they did not have the slides. He said he observed that when public comment was given the copies could be given to the Secretary and they could be included in the Minutes. He said if they are included in the Minutes they would be available on the website and there would be nothing hidden and we would not need to spend the \$40,000.

President Gomez asked about the 150 word summaries.

Sue Blackman, Library Commission Secretary, said the documents brought in by the public would be referred to in the Minutes but they would not be incorporated into the Minutes like the 150 word statements are.

Commissioner Randlett asked if there is anything that prevents printed materials being available by the public in the back of the auditorium.

Sue Blackman, Library Commission Secretary, said there is nothing to prevent the public from bringing copies of printed materials and placing them at the back of the auditorium.

Commissioner Randlett said this would be a low-tech solution that if somebody had a PowerPoint they wanted everyone in the forum to see that they could print it and leave it at the back of the auditorium and advise people that if they wanted to see it, it was available and copies could be made available to the Commissioners.

Commissioner Munson said when we have an audiovisual presentation it is at the request of the Commission or City Librarian and it is part of a program that is planned to inform the public. He said this is one of the ways we communicate about the basic business of the Commission. He said that the presenters have a contract with the Library. He said if members of the audience want to make comments have their three minutes to do so. He said the Commission spends a lot of time listening to public comment and some of it is helpful and some of it is not helpful. He said there can be different opinions about what is being said. He said if the Commission wants to reserve this means of communication that is reasonable. He said if the public presents all kinds of stuff, the meetings could get very long and could be confusing to the public. He said a person that disagrees can provide written material at the back of the room and talk at the podium for three minutes. He said we are trying to get the job done.

Motion: By Commissioner Randlett, seconded by Commissioner Mall given the concern that is being raised by the public that they do not have the ability to present materials through the audio visual equipment to all those at the meeting in some type of presentation form, that they do have the ability to bring materials in a printed form and that they use their time in public comment to be able to go through the materials and that if other people have questions they can ask the speakers at the end of the meeting in the back of the room.

Action: AYES 6-0: (Lee, Gomez, Mall, Munson, Ono, and Randlett.)



SUNSHINE ORDINANCE TASK FORCE CITY AND COUNTY OF SAN FRANCISCO DRAFT - MINUTES

Hearing Room 408
City Hall, 1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

October 2, 2013 – 4:00 PM

Regular Meeting

1. Call to Order, Roll Call, and Agenda Changes.

The meeting was called to order at 4:10 p.m. Chair Grant and Members Pilpel and Hyland were noted absent. There was a quorum. Member Hyland was noted present at 4:55 p.m. Member Sims was noted absent at 7:57 p.m.

Vice Chair Fischer presided over the meeting.

Vice Chair Fischer announced a request for File No. 12059 (Item 4) be continued to November 5, 2013, by the Complainant and Respondent.

The Complainant of File No. 12058 (Item 2) requested a continuance of his hearing due to the affect of member absences on the determination of the complaint.

Member Knee, seconded by Member Washburn, moved to accept the Complainants and Respondents' request for continuance of File No. 12058 and File No. to November 6, 2013.

Speakers: Allen Gross expressed opposition with the members' absences; Peter Warfield requested additional information on the reason for the continuance of complaint No. 12059; Patrick Monette-Shaw requested the members uphold absences as stated in Sunshine Ordinance Task Force bylaws; Dominic Maionchi expressed reasoning of his request for continuance of Complaint No. 12058; Ray Hartz expressed six members being present would not make a fair determination on today's complaints.

The motion PASSED by the following vote:

Ayes: 5 – Washburn, Sims, David, Oka, Fischer

Noes: 1 – Knee

Absent: 3 – Pilpel, Hyland, Grant

2. **File No. 12058:** The Compliance and Amendments Committee has referred File No. 12058, Dominic Maionchi against Recreation and Park for allegedly failing to provide records requested pertaining to berthing contracts between the City and County of San Francisco and slip holders.

Continuance requested by Complainant. Motion Passed (Item 1).

Member Knee, seconded by Member Washburn, moved to accept the Complainants and Respondents' request for continuance of File No. 12058 and File No. to November 6, 2013.

RECESS

4:50 p.m. - 5:00 p.m.

3. **Public Comment:**

Allen Grossman announced the Ethics Commission's new draft of regulations; Ray Hartz expressed concern with the Education, Outreach and Training Committee Chair not drafting a letter to the Clerk of the Board as determined by the committee; Peter Warfield expressed the importance of open government; Male Speaker presented misconduct of Library Commission; Patrick Monette-Shaw expressed the Ethics Commission attempt to exempt themselves from hearing complaints referred for enforcement; Female Speaker expressed the treatment of the public by City agencies who request public records.

***The following information is provided by a speaker, pursuant to Administrative Code Section 67.16. The content is neither generated by, nor subject to approval or verification of accuracy by, the Sunshine Ordinance Task Force.**

Derek Kerr, MD submitted the following additional information for Public Comment as follows:

Agenda Item (3) Public Comment (150 words):

Derek Kerr's 150 Word Summary for inclusion in body of SOTF – OCTOBER 2, 2013 Meeting Minutes

*Burying my Commendation under the misleading agenda item "LHH Update" follows a pattern of deception. For example, Laguna Honda CEO Mivic Hirose was required to read this Commendation before the hospital's 40-member Leadership Forum. Instead, she read it to 11 members of her Executive Committee. After we complained, Hirose complied. Also, DPH Director Barbara Garcia had to retract a DPH Press Release that had labeled us "detractors" who made "false statements" about misappropriated patient funds. The first retraction was unsigned. We complained. Garcia signed the second version, but it was a Memo - not a Press Release. We complained again, and she complied. Lucky for us, we could appeal these Settlement violations to the Court. Now, we appeal to you because the Sunshine Ordinance was violated. This habitual misconduct will persist unless you monitor the Health Department and Commission for compliance.

4. **File No. 12059:** The Compliance and Amendments Committee has referred File No. 12059, Supreet Pabla, SEIU Local 1021 against Human Services Agency for allegedly failing to provide records requested relevant to the representation of the bargaining unit's employees.

Continuance requested by Complainant and Respondent. Motion Passed (Item 1).

Member Knee, seconded by Member Washburn, moved to accept the Complainants and Respondents' request for continuance of File No. 12058 and File No. to November 6, 2013.

5. **File No. 13013:** The Compliance and Amendments Committee has referred File No. 13013, of Ray Hartz Jr., against Luis Herrera, City Librarian for allegedly abridging public comment by allowing selective accessibility of library audio visual equipment.

Ray Hartz Jr., (Complainant) provided an overview of the complaint; the Library Commission continues to deny access to its equipment to present documents and /or PowerPoint presentations during its meetings as it allows for guests of the commission. The Complainant further requested the Task Force to find violations. There were no speakers in support of the Complainant. Sue Blackman (Respondent), provided an overview of the Ethics Commission defense; the Library Commission is a policy body that has the right to not allow the public to use its audio visual equipment and the commission is in compliance with the Sunshine Ordinance. There were no speakers who offered facts and evidence in support of the Respondent. A question and answer period followed. The Complainant responded to questions raised throughout the discussion and further requested the Task Force to find violations. The Respondent waived rebuttal. The Complainant provided a rebuttal and further requested the Task Force to find violations.

Member Washburn, seconded by Member David, moved to find Luis Herrera, City Librarian, in violation of the Sunshine Ordinance as determined in the Order of Determination; referral to the Ethics Commission for enforcement.

Speakers: Patrick Monette-Shaw expressed support of the referral; Male Speaker presented PowerPoint on visual impact of audio visual presentations when allowed access to equipment; Peter Warfield expressed support of the motion.

The motion PASSED by the following vote:

Ayes: 7– Knee, Washburn, Sims, David, Hyland, Oka, Fischer

Absent: 2 – Pilpel, Grant

Member Washburn, seconded by Member David, moved to find Luis Herrera, City Librarian in violation of the Sunshine Ordinance as determined in the Order of Determination; referral to the Board of Supervisors for enforcement.

The motion PASSED by the following vote:

Ayes: 6– Knee, Washburn, Sims, Hyland, Oka, Fischer

Noes: 1 – David

Absent: 2 – Pilpel, Grant

6. **File No. 13012:** Complaint filed by Michael Fondanova, representing Glad Tidings Church against the Office of the Assessor-Recorder for allegedly failing to provide complete records associated with Glad Tidings Church and San Francisco Teen Challenge.

Item continued from September 4, 2013 meeting. Jurisdiction determined.

Michael Fondanova (Complainant) provided an overview of the complaint and requested the Task Force to find violations. There were no speakers in support of the Complainant. Margaret Sing, Assessor - Recorder's Office, (Respondent), provided an overview of the Office of the Assessor-Recorder's defense; all non-exempt documents have been handed over to the Complainant. There were no speakers who offered facts and evidence in support of the Respondent. A question and answer period followed. The Respondent provided a rebuttal. The Complainant provided a rebuttal and further requested the Task Force to find violations.

Due to a lack of a motion, the Task Force FOUND NO VIOLATION.

7. **File No. 13021:** Complaint filed by Patrick Monette-Shaw and Maria Rivero, MD against the Public Health Commission for allegedly violating Sunshine Ordinance §§ 67.7(a), 67.7(b), and 67.9(a); failing to notice members of the public, and noticing a deficient agenda.

Member Knee, seconded by Member David, moved to find jurisdiction.

Speakers: None.

The motion PASSED by the following vote:

Ayes: 7 – Knee, Washburn, Sims, David, Hyland, Oka, Fischer

Absent: 2 – Pilpel, Grant

Patrick-Monette-Shaw and Maria River, MD (Complainants) provided an overview of the complaint; the intension of the Public Health Commission was to not provide a meaningful description of the item as an accommodation regarding Dr. Kerr and listed the item generically "Laguna Honda Update". The Complainants requested the Task Force to find violations. Dr. Kerr presented facts and evidence in support of the Complainants. Mark Morewitz, Executive Secretary, Public Health Commission (Respondent), provided an overview of the Public Health Commission's defense; the item was written by the advice of their City Attorney. The Commission has since taken steps to ensure future items are written in compliance with the Sunshine Ordinance. There were no speakers who offered facts and evidence in support of the Respondent. A question and answer period followed. The Respondent provided a rebuttal. The Complainant provided a rebuttal and further requested the Task Force to find violations.

Speakers: None.

Member Washburn, seconded by Member Oka, moved to find the Public Health Commission in violation of §§ 67.7(a), 67.7(b) and 67.9(a); referral to the Compliance and Amendments Committee to provide guidance on constructing agendas.

The motion PASSED by the following vote:

Ayes: 7 – Knee, Washburn, Sims, David, Hyland, Oka, Fischer

Absent: 2 – Pilpel, Grant

RECESS

6:55 p.m. – 7:00 p.m.

8. **File No. 13024:** Complaint filed by Mica Ringel against the Planning Department for allegedly failing to provide requested records associated with the proposed development of 480 Potrero Avenue.

Member Knee, seconded by Member Sims, moved to find jurisdiction.

Speakers: None.

The motion PASSED without objection.

Mica Ringel (Complainant) provided an overview of the complaint; requested to view complete case file, through research and requests the Complainant noticed missing files not included in the original request for records. The Complainant requested the Task Force to find violations. There were no speakers in support of the Complainant. Lulu Hwang, Custodian of Records, Planning Department (Respondent), provided an overview of the Planning Department's defense; missing documents were retrieved and handed over to the Complainant on a disk. There were no speakers who offered facts and evidence in support of the Respondent. A question and answer period followed. The Respondent provided a rebuttal. The Complainant provided a rebuttal and further requested the Task Force to find violations.

Member Knee, seconded by Member Washburn, moved to find the Planning Department, in violation of the Sunshine Ordinance §§67.26 and 67.27.

Speakers: None.

The motion FAILED by the following vote:

Ayes: 4 – Washburn, Hyland, Oka, Fischer

Noes: 2 – Knee, David

Absent: 3 – Pilpel, Sims, Grant

Member Knee, seconded by Member Washburn, moved to find the Planning Department, in violation of the Sunshine Ordinance §§67.21(a) and 67.29-7; referral to Compliance and Amendments Committee.

Speakers: None.

The motion PASSED by the following vote:

Ayes: 6 – Knee, Washburn, David, Hyland, Oka, Fischer

Absent: 3 – Pilpel, Sims, Grant

9. Approval of Minutes from the March 6, 2013 Regular Meeting.

Member Washburn, seconded by Member Hyland, moved to CONTINUE Items 9 through 15, to the November 6, 2013 meeting.

Speaker: None.

The motion PASSED by the following vote:

Ayes: 6– Knee, Washburn, David, Hyland, Oka, Fischer

Absent: 3 – Pilpel, Sims, Grant

10. Approval of Minutes from the April 3, 2013 Regular Meeting.

Member Washburn, seconded by Member Hyland, moved to CONTINUE Items 9 through 15, to the November 6, 2013 meeting.

Speaker: None.

The motion PASSED by the following vote:

Ayes: 6– Knee, Washburn, David, Hyland, Oka, Fischer

Absent: 3 – Pilpel, Sims, Grant

11. Approval of Minutes from the May 1, 2013 Regular Meeting.

Member Washburn, seconded by Member Hyland, moved to CONTINUE Items 9 through 15, to the November 6, 2013 meeting.

Speaker: None.

The motion PASSED by the following vote:

Ayes: 6– Knee, Washburn, David, Hyland, Oka, Fischer

Absent: 3 – Pilpel, Sims, Grant

12. **Approval of Minutes from the June 5, 2013 Regular Meeting.**

Member Washburn, seconded by Member Hyland, moved to CONTINUE Items 9 through 15, to the November 6, 2013 meeting.

Speaker: None.

The motion PASSED by the following vote:

Ayes: 6– Knee, Washburn, David, Hyland, Oka, Fischer

Absent: 3 – Pilpel, Sims, Grant

13. **Approval of Minutes from the July 9, 2013 Special Meeting.**

Member Washburn, seconded by Member Hyland, moved to CONTINUE Items 9 through 15, to the November 6, 2013 meeting.

Speaker: None.

The motion PASSED by the following vote:

Ayes: 6– Knee, Washburn, David, Hyland, Oka, Fischer

Absent: 3 – Pilpel, Sims, Grant

14. **Approval of Minutes from the August 7, 2013 Regular Meeting.**

Member Washburn, seconded by Member Hyland, moved to CONTINUE Items 9 through 15, to the November 6, 2013 meeting.

Speaker: None.

The motion PASSED by the following vote:

Ayes: 6– Knee, Washburn, David, Hyland, Oka, Fischer

Absent: 3 – Pilpel, Sims, Grant

15. **Approval of Minutes from the September 4, 2013 Regular Meeting.**

Member Washburn, seconded by Member Hyland, moved to CONTINUE Items 9 through 15, to the November 6, 2013 meeting.

Speaker: None.

The motion PASSED by the following vote:

Ayes: 6– Knee, Washburn, David, Hyland, Oka, Fischer

Absent: 3 – Pilpel, Sims, Grant

16. **Report: Compliance and Amendments Committee meeting of September 17, 2013.**

Member Washburn (Chair) provided a summary of the Compliance and Amendments Committee meeting of September 17, 2013.

Speakers: None.

17. **Report: Education, Outreach and Training Committee meeting of September 16, 2013.**

Member David (Vice-Chair) provided a summary of the Education, Outreach and Training Committee meeting of September 17, 2013.

18. **Administrator's Report.**

Report was given by Andrea Ausberry, Sunshine Ordinance Task Force Administrator.

19. **Announcements, Comments, Questions, and Future Agenda Items.**

Member Knee announced, applications have been submitted for Seats 2 and 4 of the Task Force.

20. **ADJOURNMENT**

Member Knee, seconded by Member David, moved to ADJOURN.

There were no speakers. **The motion PASSED without objection.**

There being no further business, the Task Force adjourned at the hour of 8:31 p.m.

San Francisco
Ethics Commission



25 Van Ness Ave., Suite 220
San Francisco, CA 94102
Phone 252-3100 Fax 252-3112

ETHICS COMMISSION REGULATIONS FOR HANDLING VIOLATIONS OF THE SUNSHINE ORDINANCE

Effective Date: January 25, 2013
Includes amendments effective November 22, 2013

TABLE OF CONTENTS

CHAPTER ONE

I.	Preamble.....	2
II.	Definitions.....	2

CHAPTER TWO

I.	Referrals to the Ethics Commission	5
II.	Show Cause Hearing	5

CHAPTER THREE

I.	Complaints Alleging Willful Violations of the Sunshine Ordinance by Elected Officials or Department Heads or Complaints Filed Directly with the Ethics Commission Alleging Violations of the Sunshine Ordinance.....	8
II.	Investigation and Recommendation	9
III.	Public Hearing	10

CHAPTER FOUR

I.	Miscellaneous Provisions	13
II.	Severability	15

CHAPTER ONE

I. PREAMBLE

Pursuant to San Francisco Charter, section 15.102, the San Francisco Ethics Commission promulgates these Regulations in order to ensure compliance with the San Francisco Sunshine Ordinance, San Francisco Administration Code, section 67.1, et seq. These Regulations shall apply to complaints alleging violations of the Sunshine Ordinance. All complaints alleging violations of conflict of interest, campaign finance, lobbyist, campaign consultant or other governmental ethics laws shall be handled separately under the Ethics Commission's Regulations for Investigations and Enforcement Proceedings.

II. DEFINITIONS

For purposes of these Regulations, the following definitions shall apply:

- A. "Brown Act" means California Government Code section 54950, et seq.
- B. "Business day" means any day other than a Saturday, Sunday, City holiday, or a day on which the Commission office is closed for business.
- C. "California Public Records Act" means California Government Code section 6250, et seq.
- D. "City" means the City and County of San Francisco.
- E. "City officer" means any officer identified in San Francisco Administrative Code Section 1.50, as well as any City body composed entirely of such officers.
- F. "Commission" means the Ethics Commission.
- G. "Complaint" means a Task Force referral or a referral from the Supervisor of Records, a written document submitted directly to the Ethics Commission alleging a violation of the Sunshine Ordinance, or a matter initiated by Ethics Commission staff alleging a violation of the Sunshine Ordinance.
- H. "Complainant" means a person or entity that initiated a matter with the Task Force, Supervisor of Records, or Commission alleging a violation of the Sunshine Ordinance. "Complainant" shall also mean the Commission if the matter was initiated by Commission staff.
- I. "Custodian" means a City officer or employee having custody of any public record.

J. "Day" means calendar day unless otherwise specifically indicated. If a deadline falls on a weekend or City holiday, the deadline shall be extended to the next business day.

K. "Deliver" means transmit by U.S. mail or personal delivery to a person or entity. The Commission, the Executive Director, the Task Force, a Respondent, or the Complainant receiving material may consent to any other means of delivery, including delivery by e-mail or fax. In any proceeding, the Commission Chairperson may order that the delivery of briefs or other materials be accomplished by e-mail.

L. "Elected official" shall mean the Mayor, a Member of the Board of Supervisors, City Attorney, District Attorney, Treasurer, Sheriff, Assessor, Public Defender, a Member of the Board of Education of the San Francisco Unified School District, and a Member of the Governing Board of the San Francisco Community College District.

M. "Executive Director" means the Executive Director of the Commission or the Executive Director's designee.

N. "Exculpatory information" means information tending to show that the Respondent has not committed the alleged violation(s).

O. "Order of Determination" means: 1) an order from the Task Force that forms the basis of a show cause hearing for Task Force referrals made under Sunshine Ordinance section 67.30(c); or 2) a final recommendation issued by the Task Force, made pursuant to Sunshine Ordinance section 67.34, that a willful violation of the Sunshine Ordinance by an elected official or department head occurred.

P. "Public Records" means records as defined in section 6252(e) of the California Public Records Act, which includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics, and/or Sunshine Ordinance section 67.20(b).

Q. "Referral" means a document from the Task Force or Supervisor of Records to the Commission finding a violation of the Sunshine Ordinance.

R. "Respondent" means a City officer or City employee who is alleged or identified in a complaint to have committed a violation of the Sunshine Ordinance.

S. "Sunshine Ordinance" means San Francisco Administrative Code section 67.1, et seq.

T. "Task Force" means the Sunshine Ordinance Task Force, established by San Francisco Administrative Code section 67.30.

U. "Willful violation" means an action or failure to act with the knowledge that such act or failure to act was a violation of the Sunshine Ordinance.

CHAPTER TWO

I. REFERRALS TO THE ETHICS COMMISSION

A. Matters to be heard in a Show Cause Hearing.

1. Under this Chapter, the Ethics Commission will conduct a Show Cause Hearing on any referral, as defined by these Regulations, finding:

- a. willful violations of the Sunshine Ordinance by City officers and employees (other than elected officials or department heads), or
- b. non-willful violations of the Sunshine Ordinance by elected officials, department heads, or City officers and employees.

2. Complaints alleging willful violations of the Sunshine Ordinance against elected officials and department heads shall be handled pursuant to Chapter Three of these regulations.

B. Scheduling of Show Cause Hearing.

1. After receipt of a referral, the Commission shall schedule a Show Cause Hearing on the matter at the next regular Ethics Commission meeting, provided that the Show Cause Hearing can be scheduled pursuant to the agenda and notice requirements as set forth in Sunshine Ordinance section 67.7 and the Brown Act.

2. In the event that four or more Commissioners will not be present at the scheduled Show Cause Hearing, the Commission may reschedule or continue to the next practicable regular Ethics Commission meeting.

II. SHOW CAUSE HEARING

A. **Public Hearing.** The Show Cause Hearing shall be open to the public.

B. **Standard of Proof.** The Respondent(s) shall have the burden to show that he or she did not commit a violation of the Sunshine Ordinance.

C. Hearing Procedures.

1. Each Respondent and Complainant may speak on his or her own behalf, subject to the following time limits: each Respondent shall be permitted a five-minute statement; each Complainant shall be permitted a five-minute statement; and each Respondent shall be permitted a three-minute rebuttal. At his or her discretion, the Commission Chairperson may allow additional testimony and may extend the time limit for the parties.

2. Unless otherwise decided by the Commission, formal rules of evidence shall not apply to the hearing. Each Respondent and Complainant may submit any documents to the Commission to support his or her position. Each party's written submission shall not exceed five pages, excluding supporting documents. Any documents so provided shall also be provided to the opposing party and shall be delivered to the Commission no later than five business days prior to the scheduled hearing. Upon mutual consent of the Complainant(s), Respondent(s), and the Executive Director, a response may be distributed by e-mail. Commissioners may question each party or any other person providing testimony regarding the allegations. The Respondent(s) and Complainant(s) may not directly question each other.

3. If either party fails to appear and the Commission did not grant the party a continuance or reschedule the matter under Chapter IV, section I.E, then the Commission may make a decision in the party's absence.

D. Deliberations and Findings.

1. The Commission shall deliberate in public. Public comment on the matter shall be allowed at each hearing, in accordance with the Sunshine Ordinance and the Brown Act.

2. To determine that a violation of the Sunshine Ordinance did not occur, the Commission must conclude that, based on a preponderance of the evidence, the Respondent did not commit a violation of the Sunshine Ordinance. The Commission shall consider all the relevant circumstances surrounding the case.

3. The votes of at least three Commissioners are required to make a finding that a Respondent has not committed a violation of the Sunshine Ordinance. The finding that a Respondent did or did not commit a violation of the Sunshine Ordinance shall be supported by findings of fact and conclusions of law and shall be based on the entire record of the proceedings.

E. Ethics Commission Orders.

1. If the Commission finds that a Respondent committed a violation of the Sunshine Ordinance, the Commission may issue orders requiring any or all of the following:

a. the Respondent(s) to cease and desist the violation and/or produce the public record(s); and/or

b. the Executive Director to post on the Ethics Commission's website the Commission's finding that the Respondent(s) violated the Sunshine Ordinance; and/or

c. The Executive Director to issue a warning letter to the Respondent and inform the Respondent's appointing authority of the violation.

2. After making its decision, the Commission will instruct staff to prepare a written order reflecting the Commission's findings. The Chairperson shall be authorized to approve and sign the Commission's written order on behalf of the full Commission.

3. After issuing an order or instructing the Executive Director to act, or upon a finding of no violation, the Commission will take no further action on the matter.

F. Public Announcement.

Once the Commission determines that the Respondent did or did not commit a violation of the Sunshine Ordinance, the Commission will publicly announce this conclusion. The Commission's announcement may, but need not, include findings of law and fact.

CHAPTER THREE

I. COMPLAINTS ALLEGING WILLFUL VIOLATIONS OF THE
SUNSHINE ORDINANCE BY ELECTED OFFICIALS OR
DEPARTMENT HEADS
OR
COMPLAINTS FILED DIRECTLY WITH THE ETHICS COMMISSION
ALLEGING VIOLATIONS OF THE SUNSHINE ORDINANCE.

A. **Matters heard under this Chapter.**

1. Pursuant to Sunshine Ordinance, section 67.34, the Ethics Commission shall handle complaints alleging violations of the Sunshine Ordinance by an elected official or department head.

2. Pursuant to Sunshine Ordinance, section 67.35(d), if the District Attorney and/or Attorney General take no action for 40 days after receiving notification of a custodian's failure to comply with an order made pursuant to Sunshine Ordinance section 67.21(d) or (e), then the person who made the public record request may file a complaint directly with the Ethics Commission relating to that failure to comply.

3. Ethics Commission staff may initiate a complaint to allege a violation of the Sunshine Ordinance against any City officer or City employee.

4. This Chapter will govern:

a. referrals alleging willful violations of the Sunshine Ordinance against an elected official or department head, and

b. complaints initiated under subsections A.2 or A.3 alleging violations of the Sunshine Ordinance by any City officer or employee.

5. Any referral that does not allege a willful violation of the Sunshine Ordinance against an elected official or a department head shall be handled pursuant to Chapter Two of these regulations.

B. **Scheduling of Hearing.**

1. When the Executive Director receives a referral alleging a willful violation of the Sunshine Ordinance against an elected official or a department head, or when the Executive Director receives a complaint filed under subsection A.2, or when staff initiates a complaint under subsection A.3, the Executive Director shall, within 15 business days of the conclusion of his or her investigation, schedule a public hearing at the next regular meeting of the Commission, unless impracticable, provided that the hearing can be scheduled pursuant to the agenda and notice requirements as set forth in Sunshine Ordinance section 67.7 and the Brown Act.

2. Within 15 business days of the conclusion of his or her investigation, the Executive Director shall issue a written notice and his or her report and recommendation pursuant to Chapter Three, section II.C, to each Commission member, each Respondent, and each Complainant, including the date, time and location of the hearing.

3. In the case of a referral, the Executive Director also shall provide a courtesy notice and a copy of the report and recommendation to the referring body.

II. INVESTIGATION AND RECOMMENDATION

A. Factual Investigation.

Upon receipt of a complaint, the Executive Director shall conduct a factual investigation. The Executive Director's investigation may include, but shall not be limited to, interviews of the Respondent(s) and any witnesses, as well as the review of documentary and other evidence. The investigation shall be concluded within 30 days following the Executive Director's receipt of the complaint. The Executive Director may extend the time for good cause, including but not limited to: staffing levels; the number of other pending complaints under these Regulations or the Ethics Commission Regulations for Investigations and Enforcement Proceedings; other Ethics Commission proceedings; other staffing needs associated with pending campaigns; or the cooperation of witnesses, Complainants or Respondents. If the Executive Director extends the time for the investigation to conclude, his or her reasons for the extension shall be included in the report to the Ethics Commission.

B. Subpoenas.

During an investigation, the Executive Director may compel by subpoena the testimony of witnesses and the production of documents relevant to the investigation.

C. Report and Recommendation.

1. After the Executive Director has completed his or her investigation, the Executive Director shall prepare a written report and recommendation summarizing his or her factual and legal findings. The recommendation shall contain a summary of the relevant legal provisions and the evidence gathered through the Commission's investigation. To support the report and recommendation, the Executive Director may submit evidence through declaration. The report and recommendation shall not exceed ten pages excluding attachments.

2. The report shall recommend one of the following:

- a. that Respondent(s) willfully violated the Sunshine Ordinance;

b. that Respondent(s) violated the Sunshine Ordinance but the violation was not willful; or

c. that Respondent(s) did not violate the Sunshine Ordinance.

D. Response to the Report and Recommendation.

1. Each Complainant and Respondent may submit a written response to the Director's report and recommendation. The response may contain legal arguments, a summary of evidence, and any mitigating or aggravating information. In support of the response, each Complainant and Respondent may submit evidence through declaration. The response shall not exceed ten pages excluding attachments.

2. If any Complainant or Respondent submits a response, he or she must deliver the response to all parties no later than five business days prior to the date of the hearing. The Complainant or Respondent must deliver eight copies of the response to the Executive Director, who must then immediately distribute copies of the response(s) to the Commission and any other Complainant or Respondent. Upon mutual consent of the Complainant(s), Respondent(s), and the Executive Director, a response may be distributed by e-mail.

III. PUBLIC HEARING

A. General Rules and Procedures.

1. The hearing shall be open to the public.

2. Each Complainant and Respondent may speak on his or her own behalf, subject to the following time limits: Complainant shall be permitted a ten-minute statement; Respondent shall be permitted a ten-minute statement; and Complainant shall be permitted a five-minute rebuttal. At his or her discretion, the Commission Chairperson may allow additional testimony and may extend the time limit for the parties.

3. Unless otherwise decided by the Commission, formal rules of evidence shall not apply to the hearing. Commissioners may question each party regarding the allegations. The Respondent(s) and Complainant(s) may not directly question each other.

4. If either party fails to appear and the Commission did not grant the party a continuance or reschedule the matter under Chapter IV, Section I.E, then the Commission may make a decision in the party's absence.

5. Except when a complaint is staff-initiated or initiated pursuant to section 67.35(d), the Executive Director's role at the hearing will be limited to providing the report containing the legal and factual basis for his or her recommendation to the Commission and to respond to questions from the Commissioners.

B. Deliberations and Findings.

1. The Commission shall deliberate in public. Public comment on the matter shall be allowed at each hearing, in accordance with the Sunshine Ordinance and the Brown Act.
2. In determining whether a violation of the Sunshine Ordinance occurred, the Commission must conclude that, based on a preponderance of the evidence, the Respondent committed a violation of the Sunshine Ordinance. The Commission shall consider all the relevant circumstances surrounding the case.
3. The votes of at least three Commissioners are required to make a finding that a Respondent has committed a willful violation of the Sunshine Ordinance or that a Respondent has committed a non-willful violation of the Sunshine Ordinance. The finding of a willful violation or non-willful violation of the Sunshine Ordinance shall be supported by findings of fact and conclusions of law and shall be based on the entire record of the proceedings.

C. Ethics Commission Orders.

1. If the Commission finds that an elected official or a department head willfully violated the Sunshine Ordinance, the Commission shall so inform the Respondent's appointing authority, or the Mayor if Respondent is an elected official. In addition, the Commission may issue orders requiring any or all of the following if it finds that an elected official, a department head, or any City officer or City employee committed a violation of the Sunshine Ordinance:
 - a. the Respondent to cease and desist the violation and/or produce the public record(s); and/or
 - b. the Executive Director to post on the Ethics Commission's website the Commission's finding that the Respondent violated the Sunshine Ordinance; and/or
 - c. the Executive Director to issue a warning letter to the Respondent and inform the Respondent's appointing authority, or the Mayor if the Respondent is an elected official, of the violation.
2. After making its decision, the Commission will instruct staff to prepare a written order reflecting the Commission's findings. The Chairperson shall be authorized to approve and sign the Commission's written order on behalf of the full Commission.
3. After issuing an order or instructing the Executive Director to act, the Commission will take no further action on the matter.

D. Finding of No Violation.

If the Commission determines that there is insufficient evidence to establish that the Respondent has committed a violation of the Sunshine Ordinance, the Commission shall publicly announce this fact. The Commission's announcement may, but need not, include findings of law and fact. Thereafter, the Commission will take no further action on the matter.

CHAPTER FOUR

I. MISCELLANEOUS PROVISIONS

A. Ex Parte Communications.

Once a complaint is filed with the Commission, no Commissioner shall engage in oral or written communications outside of a Commission meeting regarding the merits of the complaint with the Commission's staff, the Respondent(s), the Complainant(s), any member of the Task Force, the Supervisor of Records, any member of the public, or any person communicating on behalf of the Respondent(s), Complainant(s), the Supervisor of Records, or any member of the Task Force, except for communications, such as scheduling matters, generally conducted between a court and a party appearing before that court.

B. Access to Complaints and Related Documents and Deliberations.

Complaints, investigative files and information contained therein, shall be disclosed as necessary to the conduct of an investigation or as required by the California Public Records Act or the San Francisco Sunshine Ordinance. In order to guarantee the integrity of the investigation, internal notes taken by the Executive Director or his or her staff regarding complaints shall not be disclosed until the Commission has issued its final decision following the hearing.

C. Oaths and Affirmations.

The Commission may administer oaths and affirmations.

D. Selection of Designee by the Executive Director.

Whenever the Executive Director designates an individual other than a member of the Commission staff to perform a duty arising from the Charter or these Regulations, the Executive Director shall notify the Commission and the public of the designation no later than the next business day.

E. Extensions of Time and Continuances.

1. Any Respondent or Complainant may request the continuance of a hearing date in writing. The requester must deliver the written request to the Commission Chairperson, and provide a copy of the request to all other parties no later than ten business days before the date of the hearing. The Commission Chairperson shall have the discretion to consider untimely requests. The Commission Chairperson shall approve or deny the request within five business days of the submission of the request. The Commission Chairperson may grant the request upon a showing of good cause.

2. The Commission or the Commission Chairperson may reschedule a hearing at their discretion for good cause.

At any time a hearing is placed on an agenda regarding a matter under Chapter II or III of these Regulations, four or more members must be in attendance. Otherwise, the hearing shall be continued to the next regular Ethics Commission meeting, unless impracticable.

F. Place of Delivery.

1. Whenever these Regulations require delivery to the Commission, its members, or the Executive Director, delivery shall be effected at the Commission office.
2. Whenever these Regulations require delivery to a Respondent or Complainant, delivery shall be effective and sufficient if made by U.S. mail, personal delivery or any other means of delivery agreed upon by the parties under Chapter One, section II, subsection K, to an address reasonably calculated to give notice to and reach the Respondent or Complainant.
3. Delivery is effective upon the date of delivery, not the date of receipt.
4. Delivery of documents to the Commission may be conducted via electronic mail after a written request is made and approved by the Executive Director.

G. Page Limitations and Format Requirements.

Whenever these Regulations impose a page limitation, a "page" means one side of an 8½ inch by 11 inch page, with margins of at least one inch at the left, right, top and bottom of the page, typewritten and double-spaced in no smaller than 12 point type. Each page and any attachments shall be consecutively numbered.

H. Conclusion of Hearing.

For the purposes of these Regulations, a hearing concludes on the date on which the Commission announces its decision.

I. Complaints alleging both Sunshine Violations and Violations Handled Under the Ethics Commission's Regulations for Investigations and Enforcement Proceedings.

If a complaint alleges both violations of the Sunshine Ordinance and violations handled under the Ethics Commission's Regulations for Investigations and Enforcement Proceedings, the allegations involving violations of the Sunshine Ordinance shall be handled separately under these Regulations. Staff shall initiate a complaint of the alleged violations of the Sunshine Ordinance under Chapter Three, Section I.A.3 of these Regulations.

J. Certification by participating Commissioner if he or she did not attend proceedings held under Chapter II or III in their entirety.

Each Commissioner who participates in a decision, but who did not attend the hearing in its entirety, shall certify on the record that he or she personally heard the testimony (either in person or by listening to a tape or recording of the proceeding) and reviewed the evidence, or otherwise reviewed the entire record of the proceedings.

II. SEVERABILITY

If any provision of these Regulations, or the application thereof, to any person or circumstance, is held invalid, the validity of the remainder of the Regulations and the applicability of such provisions to other persons and circumstances shall not be affected thereby.

S:\Enforcement\Investigations.Enforcement.Regulations\Sunshine.Regulations\EC.Sunshine.Regulations.effective.Nov.2013

Provisions of the Sunshine Ordinance - Section 67

Select Language ▼

Article I: In General

Sec. 67.1. Findings and Purpose.

Sec. 67.2. Citation.

Article II: Public Access to Meetings

Sec. 67.3. Definitions.

Sec. 67.4. Passive Meetings.

Sec. 67.5. Meetings to Be Open and Public; Application of Brown Act.

Sec. 67.6. Conduct of Business; Time and Place for Meetings.

Sec. 67.7. Agenda Requirements; Regular Meetings.

Sec. 67.7-1. Public Notice Requirements.

Sec. 67.8. Agenda Disclosures: Closed Sessions.

Sec. 67.8-1. Additional Requirements for Closed Sessions.

Sec. 67.9. Agendas and Related Materials: Public Records.

Sec. 67.10. Closed Sessions: Permitted Topics.

Sec. 67.11. Statement of Reasons for Closed Sessions.

Sec. 67.12. Disclosure of Closed Session Discussions and Actions.

Sec. 67.13. Barriers to Attendance Prohibited.

Sec. 67.14. Video and Audio Recording, Filming and Still Photography.

Sec. 67.15. Public Testimony.

Sec. 67.16. Minutes.

Sec. 67.17. Public Comment by Members of Policy Bodies.

Article III: Public Information and Public Records

Sec. 67.20. Definitions.

Sec. 67.21. Process for Gaining Access to Public Records; Administrative Appeals.

Sec. 67.21-1. Policy Regarding Use and Purchase of Computer Systems.

Sec. 67.22. Release of Oral Public Information.

Sec. 67.23. Public Review File--Policy Body Communications.

Sec. 67.24. Public Information that Must Be Disclosed.

Sec. 67.25. Immediacy of Response.

Sec. 67.26. Withholding Kept to a Minimum.

Sec. 67.27. Justification of Withholding.

Sec. 67.28. Fees for Duplication.

Sec. 67.29. Index to Records.

Sec. 67.29-1. Records Survive Transition of Officials.

Sec. 67.29-2. Internet Access/World Wide Web Minimum Standards.

Sec. 67.29-3.

Sec. 67.29-4. Lobbyist On Behalf of the City.

Sec. 67.29-5. Calendars of Certain Officials.

Sec. 67.29-6. Sources of Outside Funding.

Sec. 67.29-7. Correspondence and Records Shall Be Maintained.

Article IV: Policy Implementation

Sec. 67.30. The Sunshine Ordinance Task Force.

Sec. 67.31. Responsibility for Administration.

Sec. 67.32. Provision of Services to other Agencies; Sunshine Required.

Sec. 67.33. Department Head Declaration.

Sec. 67.34. Willful Failure Shall Be Official Misconduct.

Sec. 67.35. Enforcement Provisions.

Sec. 67.36. Sunshine Ordinance Supersedes Other Local Laws.

Sec. 67.37. Severability.

Sec. 67A.1. Prohibiting The Use Of Cell Phones, Pagers And Similar Sound-Producing Electrical Devices At And During Public Meetings.

Sec. 67.1 Findings And Purpose.

The Board of Supervisors and the People of the City and County of San Francisco find and declare:

(a) Government's duty is to serve the public, reaching its decisions in full view of the public.

(b) Elected officials, commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. The people do not cede to these entities the right to decide what the people should know about the operations of local government.

(c) Although California has a long tradition of laws designed to protect the public's access to the workings of government, every generation of governmental leaders includes officials who feel more comfortable conducting public business away from the scrutiny of those who elect and employ them. New approaches to government constantly offer public officials additional ways to hide the making of public policy from the public. As government evolves, so must the laws designed to ensure that the process remains visible.

(d) The right of the people to know what their government and those acting on behalf of their government are doing is fundamental to democracy, and with very few exceptions, that right supersedes any other policy interest government officials may use to prevent public access to information. Only in rare and unusual circumstances does the public benefit from allowing the business of government to be conducted in secret, and those circumstances should be carefully and narrowly defined to prevent public officials from abusing their authority.

(e) Public officials who attempt to conduct the public's business in secret should be held accountable for their actions. Only a strong Open Government and Sunshine Ordinance, enforced by a strong Sunshine Ordinance Task Force, can protect the public's interest in open government.

(f) The people of San Francisco enact these amendments to assure that the people of the City remain in control of the government they have created.

(g) Private entities and individuals and employees and officials of the City and County of San Francisco have rights to privacy that must be respected. However, when a person or entity is before a policy body or passive meeting body, that person, and the public, has the right to an open and public process. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.2. Citation.

This Chapter may be cited as the San Francisco Sunshine Ordinance. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.3. Definitions.

Whenever in this Article the following words or phrases are used, they shall have the following meanings:

(a) "City" shall mean the City and County of San Francisco.

(b) "Meeting" shall mean any of the following:

(1) A congregation of a majority of the members of a policy body at the same time and place;

(2) A series of gatherings, each of which involves less than a majority of a policy body, to hear, discuss or deliberate upon any item that is within the subject matter jurisdiction of the City, if the cumulative result is that a majority of members has become involved in such gatherings; or

(3) Any other use of personal intermediaries or communications media that could permit a majority of the members of a policy body to become aware of an item of business and of the views or positions of other members with respect thereto, and to negotiate consensus thereupon.

(4) "Meeting" shall not include any of the following:

(A) Individual contacts or conversations between a member of a policy body and another person that do not convey to the member the views or positions of other members upon the subject matter of the contact or conversation and in which the member does not solicit or encourage the restatement of the views of the other members;

(B) The attendance of a majority of the members of a policy body at a regional, statewide or national conference, or at a meeting organized to address a topic of local community concern and open to the public, provided that a majority of the members refrains from using the occasion to collectively discuss the topic of the gathering or any other business within the subject matter jurisdiction of the City; or

(C) The attendance of a majority of the members of a policy body at a purely social, recreational or ceremonial occasion other than one sponsored or organized by or for the policy body itself, provided that a majority of the members refrains from using the occasion to discuss any business within the subject matter jurisdiction of this body. A meal gathering of a policy body before, during or after a business meeting of the body is part of that meeting and shall be conducted only under circumstances that permit public access to hear and observe the discussion of members. Such meetings shall not be conducted in restaurants or other accommodations where public access is possible only in consideration of making a purchase or some other payment of value.

(D) Proceedings of the Department of Social Services Child Welfare Placement and Review Committee or similar committees which exist to consider confidential information and make decisions regarding Department of Social Services clients.

(c) "Passive meeting body" shall mean:

(1) Advisory committees created by the initiative of a member of a policy body, the Mayor, or a department head;

(2) Any group that meets to discuss with or advise the Mayor or any Department Head on fiscal, economic, or policy issues;

(3) Social, recreational or ceremonial occasions sponsored or organized by or for a policy body to which a majority of the body has been invited.

(4) "Passive meeting body" shall not include a committee that consists solely of employees of the City and County of San Francisco created by the initiative of a member of a policy body, the Mayor, or a department head;

(5) Notwithstanding the provisions of paragraph (4) above, "Passive meeting body" shall include a committee that consists solely of employees of the City and County of San Francisco when such committee is reviewing, developing, modifying, or creating city policies or procedures relating to the public health, safety, or welfare or relating to services for the homeless;

(d) "Policy Body" shall mean:

(1) The Board of Supervisors;

(2) Any other board or commission enumerated in the charter;

(3) Any board, commission, committee, or other body created by ordinance or resolution of the Board of Supervisors;

(4) Any advisory board, commission, committee or body, created by the initiative of a policy body;

(5) Any standing committee of a policy body irrespective of its composition.

(6) "Policy Body" shall not include a committee which consists solely of employees of the City and County of San Francisco, unless such committee was established by charter or by ordinance or resolution of the Board of Supervisors.

(7) Any advisory board, commission, committee, or council created by a federal, state, or local grant whose members are appointed by city officials, employees or agents. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 129-98, App. 4/17/98; Proposition G, 11/2/99)

Sec. 67.4. Passive Meetings.

(a) All gatherings of passive meeting bodies shall be accessible to individuals upon inquiry and to the extent possible consistent with the facilities in which they occur.

(2) Such gatherings need not be formally noticed, except on the City's website whenever possible, although the time, place and nature of the gathering shall be disclosed upon inquiry by a member of the public, and any agenda actually prepared for the gathering shall be accessible to such inquirers as a public record.

(2) Such gatherings need not be conducted in any particular space for the accommodation of members of the public, although members of the public shall be permitted to observe on a space available basis consistent with legal and practical restrictions on occupancy.

(3) Such gatherings of a business nature need not provide opportunities for comment by members of the public, although the person presiding may, in his or her discretion, entertain such questions or comments from spectators as may be relevant to the business of the gathering.

(4) Such gatherings of a social or ceremonial nature need not provide refreshments to spectators.

(5) Gatherings subject to this subsection include the following: advisory committees or other multimember bodies created in writing or by the initiative of, or otherwise primarily formed or existing to serve as a non-governmental advisor to, a member of a policy body, the Mayor, the City Administrator, a department head, or any elective officer, and social, recreational or ceremonial occasions sponsored or organized by or for a policy body to which a majority of the body has been invited. This subsection shall not apply to a committee which consists solely of employees of the City and County of San Francisco.

(6) Gatherings defined in subdivision (5) may hold closed sessions under circumstances allowed by this Article.

(b) To the extent not inconsistent with state or federal law, a policy body shall include in any contract with an entity that owns, operates or manages any property in which the City has or will have an ownership interest, including a mortgage, and on which the entity performs a government function related to the furtherance of health, safety or welfare, a requirement that any meeting of the governing board of the entity to address any matter relating to the property or its government related activities on the property, or performance under the contract or grant, be conducted as provided in subdivision (a) of this section. Records made available to the governing board relating to such matters shall be likewise available to the public, at a cost not to exceed the actual cost up to 10 cents per page, or at a higher actual cost as demonstrated in writing to such governing board. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 287-96, App. 7/12/96; Proposition G, 11/2/99)

Sec. 67.5. Meetings To Be Open And Public; Application Of Brown Act.

All meetings of any policy body shall be open and public, and governed by the provisions of the Ralph M. Brown Act (Government Code Sections 54950 et. seq.) and of this article. In case of inconsistent requirements under the Brown Act and this article, the requirement which would result in greater or more expeditious public access shall apply. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.6. Conduct Of Business; Time And Place For Meetings.

(a) Each policy body, except for advisory bodies, shall establish by resolution or motion the time and place for holding regular meetings.

(b) Unless otherwise required by state or federal law or necessary to inspect real property or personal property which cannot be conveniently brought within the territory of the City and County of San Francisco or to meet with residents residing on property owned by the City, or to meet with residents of another jurisdiction to discuss actions of the policy body that affect those residents, all meetings of its policy bodies shall be held within the City and County of San Francisco.

(c) If a regular meeting would otherwise fall on a holiday, it shall instead be held on the next business day, unless otherwise rescheduled in advance.

(d) If, because of fire, flood, earthquake or other emergency, it would be unsafe to meet at the regular meeting place, meetings may be held for the duration of the emergency at some other place specified by the policy body. The change of meeting site shall be announced, by the most rapid means of communication available at the time, in a notice to the local media who have requested written notice of special meetings pursuant to

Government Code Section 54956. Reasonable attempts shall be made to contact others regarding the change in meeting location.

(e) Meetings of passive meeting bodies as specified in Section 67.6(d)(4) of this article shall be preceded by notice delivered personally or by mail, e-mail, or facsimile as reasonably requested at least 72 hours before the time of such meeting to each person who has requested, in writing, notice of such meeting. If the advisory body elects to hold regular meetings, it shall provide by bylaws, or whatever other rule is utilized by that advisory body for the conduct of its business, for the time and place for holding such regular meetings. In such case, no notice of regular meetings, other than the posting of an agenda pursuant to Section 67.7 of this article in the place used by the policy body which it advises, is required.

(f) Special meetings of any policy body, including advisory bodies that choose to establish regular meeting times, may be called at any time by the presiding officer thereof or by a majority of the members thereof, by delivering personally or by mail written notice to each member of such policy body and the local media who have requested written notice of special meetings in writing. Such notice of a special meeting shall be delivered as described in (e) at least 72 hours before the time of such meeting as specified in the notice. The notice shall specify the time and place of the special meeting and the business to be transacted. No other business shall be considered at such meetings. Such written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the presiding officer or secretary of the body or commission a written waiver of notice. Such waiver may be given by telegram. Such written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes. Each special meeting shall be held at the regular meeting place of the policy body except that the policy body may designate an alternate meeting place provided that such alternate location is specified in the notice of the special meeting; further provided that the notice of the special meeting shall be given at least 15 days prior to said special meeting being held at an alternate location. This provision shall not apply where the alternative meeting location is located within the same building as the regular meeting place.

(g) If a meeting must be canceled, continued or rescheduled for any reason, notice of such change shall be provided to the public as soon as is reasonably possible, including posting of a cancellation notice in the same manner as described in section 67.7(c), and mailed notice if sufficient time permits. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.7. Agenda Requirements; Regular Meetings.

(a) At least 72 hours before a regular meeting, a policy body shall post an agenda containing a meaningful description of each item of business to be transacted or discussed at the meeting. Agendas shall specify for each item of business the proposed action or a statement the item is for discussion only. In addition, a policy body shall post a current agenda on its Internet site at least 72 hours before a regular meeting.

(b) A description is meaningful if it is sufficiently clear and specific to alert a person of average intelligence and education whose interests are affected by the item that he or she may have reason to attend the meeting or seek more information on the item. The description should be brief, concise and written in plain, easily understood English. It shall refer to any explanatory documents that have been provided to the policy body in connection with an agenda item, such as correspondence or reports, and such documents shall be posted adjacent to the agenda or, if such documents are of more than one page in length, made available for public inspection and copying at a location indicated on the agenda during normal office hours.

(c) The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public.

(d) No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a policy body may respond to statements made or questions posed by persons exercising their public testimony rights, to the extent of asking a question for clarification, providing a reference to staff or other resources for factual information, or requesting staff to report back to the body at a subsequent meeting concerning the matter raised by such testimony.

(e) Notwithstanding subdivision (d), the policy body may take action on items of business not appearing on the posted agenda under any of the following conditions:

(1) Upon a determination by a majority vote of the body that an accident, natural disaster or work force disruption poses a threat to public health and safety.

(2) Upon a good faith, reasonable determination by a two-thirds vote of the body, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that (A) the need to take immediate action on the item is so imperative as to threaten serious injury to the public interest if action were deferred to a subsequent special or regular meeting, or relates to a purely commendatory action, and (B) that the need for such action came to the attention of the body subsequent to the agenda being posted as specified in subdivision (a).

(3) The item was on an agenda posted pursuant to subdivision (a) for a prior meeting of the body occurring not more than five calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.

(f) Each board and commission enumerated in the charter shall ensure that agendas for regular and special meetings are made available to speech and hearing impaired persons through telecommunications devices for the deaf, telecommunications relay services or equivalent systems, and, upon request, to sight impaired persons through Braille or enlarged type.

(g) Each policy body shall ensure that notices and agendas for regular and special meetings shall include the following notice:

KNOW YOUR RIGHTS UNDER
THE SUNSHINE ORDINANCE

(Chapter 67 of the San Francisco Administrative Code)

Government's duty is to serve the public, reaching its decisions in full view of the public.

Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

FOR MORE INFORMATION

ON YOUR RIGHTS UNDER THE SUNSHINE
ORDINANCE OR TO REPORT A VIOLATION
OF THE ORDINANCE, CONTACT THE
SUNSHINE ORDINANCE TASK FORCE.

(h) Each agenda of a policy body covered by this Sunshine Ordinance shall include the address, area code and phone number, fax number, e-mail address, and a contact person's name for the Sunshine Ordinance Task Force. Information on how to obtain a free copy of the Sunshine Ordinance shall be included on each agenda. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 292-95, App. 9/8/95, Ord. 185-96, App. 5/8/96; Proposition G, 11/2/99)

Sec. 67.7-1. Public Notice Requirements.

(a) Any public notice that is mailed, posted or published by a City department, board, agency or commission to residents residing within a specific area to inform those residents of a matter that may impact their property or that neighborhood area, shall be brief, concise and written in plain, easily understood English.

(b) The notice should inform the residents of the proposal or planned activity, the length of time planned for the activity, the effect of the proposal or activity, and a telephone contact for residents who have questions.

(c) If the notice informs the public of a public meeting or hearing, then the notice shall state that persons who are unable to attend the public meeting or hearing may submit to the City, by the time the proceeding begins, written comments regarding the subject of the meeting or hearing, that these comments will be made a part of the official public record, and that the comments will be brought to the attention of the person or persons conducting the public meeting or hearing. The notice should also state the name and address of the person or persons to whom those written comments should be submitted. (Added by Ord. 185-96, App. 5/8/96; amended by Proposition G, 11/2/99)

Sec. 67.8. Agenda Disclosures: Closed Sessions.

(a) In addition to the brief general description of items to be discussed or acted upon in open and public session, the agenda posted pursuant to Government Code Section 54954.2, any mailed notice given pursuant to Government Code Section 54954.1, and any call and notice delivered to the local media and posted pursuant to Government Code Section 54956 shall specify and disclose the nature of any closed sessions by providing all of the following information:

(1) With respect to a closed session held pursuant to Government Code Section 54956.7:

LICENSE/PERMIT DETERMINATION:

applicant(s)

The space shall be used to specify the number of persons whose applications are to be reviewed.

(2) With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54956.8:

CONFERENCE WITH REAL PROPERTY NEGOTIATOR

Property:

Person(s) negotiating:

Under negotiation:

Price: Terms of payment: Both:

The space under "Property" shall be used to list an address, including cross streets where applicable, or other description or name which permits a reasonably ready identification of each parcel or structure subject to negotiation. The space under "Person(s) negotiating" shall be used to identify the person or persons with whom negotiations concerning that property are in progress. The spaces under "Under negotiation" shall be checked off as applicable to indicate which issues are to be discussed.

(3) With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54956.9, either:

CONFERENCE WITH LEGAL COUNSEL

Existing litigation:

Unspecified to protect service of process

Unspecified to protect settlement posture

or:

CONFERENCE WITH LEGAL COUNSEL

Anticipated litigation:

As defendant As plaintiff

The space under "Existing litigation" shall be used to specifically identify a case under discussion pursuant to subdivision (a) of Government Code Section 54956.9, including the case name, court, and case number, unless the identification would jeopardize the City's ability to effectuate service of process upon one or more unserved parties, in which instance the space in the next succeeding line shall be checked, or unless the identification would jeopardize the City's ability to conclude existing settlement negotiations to its advantage, in which instance the space in the next succeeding line shall be checked. If the closed session is called pursuant to subdivision (b) or (c) of Section 54956.9, the appropriate space shall be checked under "Anticipated litigation" to indicate the City's anticipated position as defendant or plaintiff respectively. If more than one instance of anticipated litigation is to be reviewed, space may be saved by entering the number of separate instances in the "As defendant" or "As plaintiff" spaces or both as appropriate.

(4) With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54957, either:

THREAT TO PUBLIC SERVICES OR FACILITIES.

Name, title and agency of law enforcement officer(s) to be conferred with:

or:

PUBLIC EMPLOYEE APPOINTMENT/HIRING

Title/description of position(s) to be filled:

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Position and, in the case of a routine evaluation, name of employee(s) being evaluated:

or:

PUBLIC EMPLOYEE DISMISSAL

Number of employees affected:

or:

(5) With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54957.6, either:

CONFERENCE WITH NEGOTIATOR-COLLECTIVE BARGAINING

Name and title of City's negotiator:

Organization(s) representing:

Police officers, firefighters and airport police

Transit Workers,

Nurses

Miscellaneous Employees

Anticipated issue(s) under negotiation:

Wages

Hours

Benefits

Working Conditions

Other (specify if known)

All

Where renegotiating a memorandum of understanding or negotiating a successor memorandum of understanding, the name of the memorandum of understanding:

In case of multiple items of business under the same category, lines may be added and the location of information may be reformatted to eliminate unnecessary duplication and space, so long as the relationship of information concerning the same item is reasonably clear to the reader. As an alternative to the inclusion of lengthy lists of names or other information in the agenda, or as a means of adding items to an earlier completed agenda, the agenda may incorporate by reference separately prepared documents containing the required information, so long as copies of those documents are posted adjacent to the agenda within the time periods required by Government Code Sections 54954.2 and 54956 and provided with any mailed or delivered notices required by Sections 54954.1 or 54956. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.8-1. Additional Requirements for Closed Sessions.

(a) All closed sessions of any policy body covered by this Ordinance shall be either audio recorded or audio and video recorded in their entirety and all such recordings shall be retained for at least TEN years, or permanently where technologically and economically feasible. Closed session

recordings shall be made available whenever all rationales for closing the session are no longer applicable. Recordings of closed sessions of a policy body covered by this Ordinance, wherein the justification for the closed session is due to "anticipated litigation" shall be released to the public in accordance with any of the following provisions: TWO years after the meeting if no litigation is filed; UPON EXPIRATION of the statute of limitations for the anticipated litigation if no litigation is filed, as soon as the controversy leading to anticipated litigation is settled or concluded.

(b) Each agenda item for a policy body covered by this ordinance that involve existing litigation shall identify the court, case number, and date the case was filed on the written agenda. For each agenda item for a group covered by this ordinance that involves anticipated litigation, the City Attorney's Office or the policy body shall disclose at any time requested and to any member of the public whether such anticipated litigation developed into litigation and shall identify the court, case number, and date the case was filed. (Added by Proposition G, 11/2/99)

Sec. 67.9. Agendas And Related Materials: Public Records.

(a) Agendas of meetings and any other documents on file with the clerk of the policy body, when intended for distribution to all, or a majority of all, of the members of a policy body in connection with a matter anticipated for discussion or consideration at a public meeting shall be made available to the public. To the extent possible, such documents shall also be made available through the policy body's Internet site. However, this disclosure need not include any material exempt from public disclosure under this ordinance.

(b) Records which are subject to disclosure under subdivision (a) and which are intended for distribution to a policy body prior to commencement of a public meeting shall be made available for public inspection and copying upon request prior to commencement of such meeting, whether or not actually distributed to or received by the body at the time of the request.

(c) Records which are subject to disclosure under subdivision (a) and which are distributed during a public meeting but prior to commencement of their discussion shall be made available for public inspection prior to commencement of, and during, their discussion.

(d) Records which are subject to disclosure under subdivision (a) and which are distributed during their discussion at a public meeting shall be made available for public inspection immediately or as soon thereafter as is practicable.

(e) A policy body may charge a duplication fee of one cent per page for a copy of a public record prepared for consideration at a public meeting, unless a special fee has been established pursuant to the procedure set forth in Section 67.28(d). Neither this section nor the California Public Records Act (Government Code sections 6250 et seq.) shall be construed to limit or delay the public's right to inspect any record required to be disclosed by that act, whether or not distributed to a policy body. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.10. Closed Sessions: Permitted Topics.

A policy body may, but is not required to, hold closed sessions:

(a) With the Attorney General, district attorney, sheriff, or chief of police, or their respective deputies, on matters posing a threat to the security of public buildings or a threat to the public's right of access to public services or public facilities.

(b) To consider the appointment, employment, evaluation of performance, or dismissal of a City employee, if the policy body has the authority to appoint, employ, or dismiss the employee, or to hear complaints or charges brought against the employee by another person or employee unless the employee complained of requests a public hearing. The body may exclude from any such public meeting, and shall exclude from any such closed meeting, during the comments of a complainant, any or all other complainants in the matter. The term "employee" as used in this section shall not include any elected official, member of a policy body or applicant for such a position, or person providing services to the City as an independent contractor or the employee thereof, including but not limited to independent attorneys or law firms providing legal services to the City for a fee rather than a salary.

(c) Notwithstanding section (b), an Executive Compensation Committee established pursuant to a Memorandum of Understanding with the Municipal Executives Association may meet in closed session when evaluating the performance of an individual officer or employee subject to that Memorandum of Understanding or when establishing performance goals for such an officer or employee where the setting of such goals requires discussion of that individual's performance.

(d) Based on advice of its legal counsel, and on a motion and vote in open session to assert the attorney-client privilege, to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would likely and unavoidably prejudice the position of the City in that litigation. Litigation shall be considered pending when any of the following circumstances exist:

(1) An adjudicatory proceeding before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator, to which the City is a party, has been initiated formally; or,

(2) A point has been reached where, in the opinion of the policy body on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the City, or the body is meeting only to decide whether a closed session is authorized pursuant to that advice or, based on those facts and circumstances, the body has decided to initiate or is deciding whether to initiate litigation.

(3) A closed session may not be held under this section to consider the qualifications or engagement of an independent contract attorney or law firm, for litigation services or otherwise.

(e) With the City's designated representatives regarding matters within the scope of collective bargaining or meeting and conferring with public employee organizations when a policy body has authority over such matters.

(1) Such closed sessions shall be for the purpose of reviewing the City's position and instructing its designated representatives and may take place solely prior to and during active consultations and discussions between the City's designated representatives and the representatives of employee organizations or the unrepresented employees. A policy body shall not discuss compensation or other contractual matters in closed session with one or more employees directly interested in the outcome of the negotiations.

(2) In addition to the closed sessions authorized by subsection 67.10(e)(1), a policy body subject to Government Code Section 3501 may hold closed sessions with its designated representatives on mandatory subjects within the scope of representation of its represented employees, as determined pursuant to Section 3504. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 37-98, App. 1/23/98; Proposition G, 11/2/99) Sec. 67.11. Statement Of Reasons For Closed Sessions.

Prior to any closed session, a policy body shall state the general reason or reasons for the closed session, and shall cite the statutory authority, including the specific section and subdivision, or other legal authority under which the session is being held. In the closed session, the policy body may consider only those matters covered in its statement. In the case of regular and special meetings, the statement shall be made in the form of the agenda disclosures and specifications required by Section 67.8 of this article. In the case of adjourned and continued meetings, the statement shall be made with the same disclosures and specifications required by Section 67.8 of this article, as part of the notice provided for the meeting.

In the case of an item added to the agenda as a matter of urgent necessity, the statement shall be made prior to the determination of urgency and with the same disclosures and specifications as if the item had been included in the agenda pursuant to Section 67.8 of this article. Nothing in this section shall require or authorize a disclosure of information prohibited by state or federal law. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.12. Disclosure Of Closed Session Discussions And Actions.

(a) After every closed session, a policy body may in its discretion and in the public interest, disclose to the public any portion of its discussion that is not confidential under federal or state law, the Charter, or non-waivable privilege. The body shall, by motion and vote in open session, elect either to disclose no information or to disclose the information that a majority deems to be in the public interest. The disclosure shall be made through the presiding officer of the body or such other person, present in the closed session, whom he or she designates to convey the information.

(b) A policy body shall publicly report any action taken in closed session and the vote or abstention of every member present thereon, as follows:

(1) Real Property Negotiations: Approval given to a policy body's negotiator concerning real estate negotiations pursuant to Government Code Section 54956.8 shall be reported as soon as the agreement is final. If its own approval renders the agreement final, the policy body shall report that approval, the substance of the agreement and the vote thereon in open session immediately. If final approval rests with another party to the negotiations, the body shall disclose the fact of that approval, the substance of the agreement and the body's vote or votes thereon upon inquiry by any person, as soon as the other party or its agent has informed the body of its approval. If notwithstanding the final approval there are conditions precedent to the final consummation of the transaction, or there are multiple contiguous or closely located properties that are being considered for acquisition, the document referred to in subdivision (b) of this section need not be disclosed until the condition has been satisfied or the agreement has been reached with respect to all the properties, or both.

(2) Litigation: Direction or approval given to the body's legal counsel to prosecute, defend or seek or refrain from seeking appellate review or relief, or to otherwise enter as a party, intervenor or amicus curiae in any form of litigation as the result of a consultation pursuant to Government Code Section 54956.9 shall be reported in open session as soon as given, or at the first meeting after an adverse party has been served in the matter if immediate disclosure of the City's intentions would be contrary to the public interest. The report shall identify the adverse party or parties, any co-parties with the City, any existing claim or order to be defended against or any factual circumstances or contractual dispute giving rise to the City's complaint, petition or other litigation initiative.

(3) Settlement: A policy body shall neither solicit nor agree to any term in a settlement which would preclude the release of the text of the settlement itself and any related documentation communicated to or received from the adverse party or parties. Any written settlement agreement and any documents attached to or referenced in the settlement agreement shall be made publicly available at least 10 calendar days before the meeting of the policy body at which the settlement is to be approved to the extent that the settlement would commit the City or a department thereof to adopting, modifying, or discontinuing an existing policy, practice or program or otherwise acting other than to pay an amount of money less than \$50,000. The agenda for any meeting in which a settlement subject to this section is discussed shall identify the names of the parties, the case number, the court, and the material terms of the settlement. Where the disclosure of documents in a litigation matter that has been settled could be detrimental to the city's interest in pending litigation arising from the same facts or incident and involving a party not a party to or otherwise aware of the settlement, the documents required to be disclosed by subdivision (b) of this section need not be disclosed until the other case is settled or otherwise finally concluded.

(4) Employee Actions: Action taken to appoint, employ, dismiss, transfer or accept the resignation of a public employee in closed session pursuant to Government Code Section 54957 shall be reported immediately in a manner that names the employee, the action taken and position affected and, in the case of dismissal for a violation of law or of the policy of the City, the reason for dismissal. "Dismissal" within the meaning of this ordinance includes any termination of employment at the will of the employer rather than of the employee, however characterized. The proposed terms of any separation agreement shall be immediately disclosed as soon as presented to the body, and its final terms shall be immediately disclosed upon approval by the body.

(5) Collective Bargaining: Any collectively bargained agreement shall be made publicly available at least 15 calendar days before the meeting of

the policy body to which the agreement is to be reported.

(c) Reports required to be made immediately may be made orally or in writing, but shall be supported by copies of any contracts, settlement agreements, or other documents related to the transaction that were finally approved or adopted in the closed session and that embody the information required to be disclosed immediately shall be provided to any person who has made a written request regarding that item following the posting of the agenda, or who has made a standing request for all such documentation as part of a request for notice of meetings pursuant to Government Code Sections 54954.1 or 54956..

(d) A written summary of the information required to be immediately reported pursuant to this section, or documents embodying that information, shall be posted by the close of business on the next business day following the meeting, in the place where the meeting agendas of the body are posted. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99).

Sec. 67.13. Barriers To Attendance Prohibited.

(a) No policy body shall conduct any meeting, conference or other function in any facility that excludes persons on the basis of actual or presumed class identity or characteristics, or which is inaccessible to persons with physical disabilities, or where members of the public may not be present without making a payment or purchase. Whenever the Board of Supervisors, a board or commission enumerated in the charter, or any committee thereof anticipates that the number of persons attending the meeting will exceed the legal capacity of the meeting room, any public address system used to amplify sound in the meeting room shall be extended by supplementary speakers to permit the overflow audience to listen to the proceedings in an adjacent room or passageway, unless such supplementary speakers would disrupt the operation of a City office.

(b) Each board and commission enumerated in the charter shall provide sign language interpreters or note-takers at each regular meeting, provided that a request for such services is communicated to the secretary or clerk of the board or commission at least 48 hours before the meeting, except for Monday meetings, for which the deadline shall be 4 p.m. of the last business day of the preceding week.

(c) Each board and commission enumerated in the charter shall ensure that accessible seating for persons with disabilities, including those using wheelchairs, is made available for each regular and special meeting.

(d) Each board and commission enumerated in the charter shall include on the agenda for each regular and special meeting the following statement: "In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City accommodate these individuals."

(e) The Board of Supervisors shall seek to provide translators at each of its regular meetings and all meetings of its committees for each language requested, where the translation is necessary to enable San Francisco residents with limited English proficiency to participate in the proceedings provided that a request for such translation services is communicated to the Clerk of the Board of Supervisors at least 48 hours before the meeting. For meetings on a Monday or a Tuesday, the request must be made by noon of the last business day of the preceding week. The Clerk of the Board of Supervisors shall first solicit volunteers from the ranks of City employees and/or from the community to serve as translators. If volunteers are not available the Clerk of the Board of Supervisors may next solicit translators from non-profit agencies, which may be compensated. If these options do not provide the necessary translation services, the Clerk may employ professional translators. The unavailability of a translator shall not affect the ability of the Board of Supervisors or its committees to deliberate or vote upon any matter presented to them. In any calendar year in which the costs to the City for providing translation services under this subsection exceeds \$20,000, the Board of Supervisors shall, as soon as possible thereafter, review the provisions of this subsection. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 292-95, App. 9/8/95; Ord. 482-96, App. 12/20/96; Proposition G, 11/2/99)

Sec. 67.14. Video and Audio Recording, Filming And Still Photography.

(a) Any person attending an open and public meeting of a policy body shall have the right to record the proceedings with an audio or video recorder or a still or motion picture camera, or to broadcast the proceedings, in the absence of a reasonable finding of the policy body that the recording or broadcast cannot continue without such noise, illumination or obstruction of view as to constitute a persistent disruption of the proceedings.

(b) Each board and commission enumerated in the charter shall audio record each regular and special meeting. Each such audio recording, and any audio or video recording of a meeting of any other policy body made at the direction of the policy body shall be a public record subject to inspection pursuant to the California Public Records Act (Government Code Section 6250 et seq.), and shall not be erased or destroyed. Inspection of any such recording shall be provided without charge on an appropriate play back device made available by the City. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

(c) Every City policy body, agency or department shall audio or video record every noticed regular meeting, special meeting, or hearing open to the public held in a City Hall hearing room that is equipped with audio or video recording facilities, except to the extent that such facilities may not be available for technical or other reasons. Each such audio or video recording shall be a public record subject to inspection pursuant to the California Public Records Act (Government Code Section 6250 et seq.), and shall not be erased or destroyed. The City shall make such audio or video recording available in digital form at a centralized location on the City's web site (www.sfgov.org) within seventy-two hours of the date of the meeting or hearing and for a period of at least two years after the date of the meeting or hearing. Inspection of any such recording shall also be provided without charge on an appropriate play back device made available by the City. This subsection (c) shall not be construed to limit or in any way modify the duties created by any other provision of this article, including but not limited to the requirements for recording closed sessions as stated in Section 67.8-1 and for recording meetings of boards and commissions enumerated in the Charter as stated in subsection (b) above. (Added by Ord. 80-08, App. 5/13/08)

Sec. 67.15. Public Testimony.

- (a) Every agenda for regular meetings shall provide an opportunity for members of the public to directly address a policy body on items of interest to the public that are within policy body's subject matter jurisdiction, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by Section 67.7(e) of this article. However, in the case of a meeting of the Board of Supervisors, the agenda need not provide an opportunity for members of the public to address the Board on any item that has already been considered by a committee, composed exclusively of members of the Board, at a public meeting wherein all interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the Board.
- (b) Every agenda for special meetings at which action is proposed to be taken on an item shall provide an opportunity for each member of the public to directly address the body concerning that item prior to action thereupon.
- (c) A policy body may adopt reasonable regulations to ensure that the intent of subdivisions (a) and (b) are carried out, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker. Each policy body shall adopt a rule providing that each person wishing to speak on an item before the body at a regular or special meeting shall be permitted to be heard once for up to three minutes. Time limits shall be applied uniformly to members of the public wishing to testify.
- (d) A policy body shall not abridge or prohibit public criticism of the policy, procedures, programs or services of the City, or of any other aspect of its proposals or activities, or of the acts or omissions of the body, on the basis that the performance of one or more public employees is implicated, or on any basis other than reasonable time constraints adopted in regulations pursuant to subdivision (c) of this section.
- (e) To facilitate public input, any agenda changes or continuances shall be announced by the presiding officer of a policy body at the beginning of a meeting, or as soon thereafter as the change or continuance becomes known to such presiding officer. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.16. Minutes.

The clerk or secretary of each board and commission enumerated in the charter shall record the minutes for each regular and special meeting of the board or commission. The minutes shall state the time the meeting was called to order, the names of the members attending the meeting, the roll call vote on each matter considered at the meeting, the time the board or commission began and ended any closed session, the names of the members and the names, and titles where applicable, of any other persons attending any closed session, a list of those members of the public who spoke on each matter if the speakers identified themselves, whether such speakers supported or opposed the matter, a brief summary of each person's statement during the public comment period for each agenda item, and the time the meeting was adjourned. Any person speaking during a public comment period may supply a brief written summary of their comments which shall, if no more than 150 words, be included in the minutes.

The draft minutes of each meeting shall be available for inspection and copying upon request no later than ten working days after the meeting. The officially adopted minutes shall be available for inspection and copying upon request no later than ten working days after the meeting at which the minutes are adopted. Upon request, minutes required to be produced by this section shall be made available in Braille or increased type size. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.17. Public Comment By Members Of Policy Bodies.

Every member of a policy body retains the full constitutional rights of a citizen to comment publicly on the wisdom or propriety of government actions, including those of the policy body of which he or she is a member. Policy bodies shall not sanction, reprove or deprive members of their rights as elected or appointed officials for expressing their judgments or opinions, including those which deal with the perceived inconsistency of non-public discussions, communications or actions with the requirements of state or federal law or of this ordinance. The release of specific factual information made confidential by state or federal law including, but not limited to, the privilege for confidential attorney-client communications, may be the basis for a request for injunctive or declaratory relief, of a complaint to the Mayor seeking an accusation of misconduct, or both. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.20. Definitions.

Whenever in this article the following words or phrases are used, they shall mean:

- (a) "Department" shall mean a department of the City and County of San Francisco.
- (b) "Public Information" shall mean the content of "public records" as defined in the California Public Records Act (Government Code Section 6252), whether provided in documentary form or in an oral communication. "Public Information" shall not include "computer software" developed by the City and County of San Francisco as defined in the California Public Records Act (Government Code Section 6254.9).
- (c) "Supervisor of Records" shall mean the City Attorney. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 375, App. 9/30/96; Proposition G, 11/2/99)

Sec. 67.21. Process For Gaining Access To Public Records; Administrative Appeals.

- (a) Every person having custody of any public record or public information, as defined herein, (hereinafter referred to as a custodian of a public record) shall, at normal times and during normal and reasonable hours of operation, without unreasonable delay, and without requiring an appointment, permit the public record, or any segregable portion of a record, to be inspected and examined by any person and shall furnish one copy thereof upon payment of a reasonable copying charge, not to exceed the lesser of the actual cost or ten cents per page.

(b) A custodian of a public record shall, as soon as possible and within ten days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered to the office of the custodian by the requester orally or in writing by fax, postal delivery, or e-mail. If the custodian believes the record or information requested is not a public record or is exempt, the custodian shall justify withholding any record by demonstrating, in writing as soon as possible and within ten days following receipt of a request, that the record in question is exempt under express provisions of this ordinance.

(c) A custodian of a public record shall assist a requester in identifying the existence, form, and nature of any records or information maintained by, available to, or in the custody of the custodian, whether or not the contents of those records are exempt from disclosure and shall, when requested to do so, provide in writing within seven days following receipt of a request, a statement as to the existence, quantity, form and nature of records relating to a particular subject or questions with enough specificity to enable a requester to identify records in order to make a request under (b). A custodian of any public record, when not in possession of the record requested, shall assist a requester in directing a request to the proper office or staff person.

(d) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b), the person making the request may petition the supervisor of records for a determination whether the record requested is public. The supervisor of records shall inform the petitioner, as soon as possible and within 10 days, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petition, and where otherwise desirable, this determination shall be in writing. Upon the determination by the supervisor of records that the record is public, the supervisor of records shall immediately order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order within 5 days, the supervisor of records shall notify the district attorney or the attorney general who shall take whatever measures she or he deems necessary and appropriate to insure compliance with the provisions of this ordinance.

(e) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b) above or if a petition is denied or not acted on by the supervisor of public records, the person making the request may petition the Sunshine Task Force for a determination whether the record requested is public. The Sunshine Task Force shall inform the petitioner, as soon as possible and within 2 days after its next meeting but in no case later than 45 days from when a petition in writing is received, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petition, and where otherwise desirable, this determination shall be in writing. Upon the determination that the record is public, the Sunshine Task Force shall immediately order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order within 5 days, the Sunshine Task Force shall notify the district attorney or the attorney general who may take whatever measures she or he deems necessary to insure compliance with the provisions of this ordinance. The Board of Supervisors and the City Attorney's office shall provide sufficient staff and resources to allow the Sunshine Task Force to fulfill its duties under this provision. Where requested by the petition, the Sunshine Task Force may conduct a public hearing concerning the records request denial. An authorized representative of the custodian of the public records requested shall attend any hearing and explain the basis for its decision to withhold the records requested.

(f) The administrative remedy provided under this article shall in no way limit the availability of other administrative remedies provided to any person with respect to any officer or employee of any agency, executive office, department or board; nor shall the administrative remedy provided by this section in any way limit the availability of judicial remedies otherwise available to any person requesting a public record. If a custodian of a public record refuses or fails to comply with the request of any person for inspection or copy of a public record or with an administrative order under this section, the superior court shall have jurisdiction to order compliance.

(g) In any court proceeding pursuant to this article there shall be a presumption that the record sought is public, and the burden shall be upon the custodian to prove with specificity the exemption which applies.

(h) On at least an annual basis, and as otherwise requested by the Sunshine Ordinance Task Force, the supervisor of public records shall prepare a tally and report of every petition brought before it for access to records since the time of its last tally and report. The report shall at least identify for each petition the record or records sought, the custodian of those records, the ruling of the supervisor of public records, whether any ruling was overturned by a court and whether orders given to custodians of public records were followed. The report shall also summarize any court actions during that period regarding petitions the Supervisor has decided. At the request of the Sunshine Ordinance Task Force, the report shall also include copies of all rulings made by the supervisor of public records and all opinions issued.

(i) The San Francisco City Attorney's office shall act to protect and secure the rights of the people of San Francisco to access public information and public meetings and shall not act as legal counsel for any city employee or any person having custody of any public record for purposes of denying access to the public. The City Attorney may publish legal opinions in response to a request from any person as to whether a record or information is public. All communications with the City Attorney's Office with regard to this ordinance, including petitions, requests for opinion, and opinions shall be public records.

(j) Notwithstanding the provisions of this section, the City Attorney may defend the City or a City Employee in litigation under this ordinance that is actually filed in court to any extent required by the City Charter or California Law.

(k) Release of documentary public information, whether for inspection of the original or by providing a copy, shall be governed by the California Public Records Act (Government Code Section 6250 et seq.) in particulars not addressed by this ordinance and in accordance with the enhanced disclosure requirements provided in this ordinance.

(l) Inspection and copying of documentary public information stored in electronic form shall be made available to the person requesting the information in any form requested which is available to or easily generated by the department, its officers or employees, including disk, tape,

printout or monitor at a charge no greater than the cost of the media on which it is duplicated. Inspection of documentary public information on a computer monitor need not be allowed where the information sought is necessarily and unseparably intertwined with information not subject to disclosure under this ordinance. Nothing in this section shall require a department to program or reprogram a computer to respond to a request for information or to release information where the release of that information would violate a licensing agreement or copyright law. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 253-96, App. 6/19/96; Proposition G, 11/2/99)

Sec. 67.21.1. Policy Regarding Use And Purchase Of Computer Systems.

(a) It is the policy of the City and County of San Francisco to utilize computer technology in order to reduce the cost of public records management, including the costs of collecting, maintaining, and disclosing records subject to disclosure to members of the public under this section. To the extent that it is technologically and economically feasible, departments that use computer systems to collect and store public records shall program and design these systems to ensure convenient, efficient, and economical public access to records and shall make public records easily accessible over public networks such as the Internet.

(b) Departments purchasing new computer systems shall attempt to reach the following goals as a means to achieve lower costs to the public in connection with the public disclosure of records:

(1) Implementing a computer system in which exempt information is segregated or filed separately from otherwise disclosable information.

(2) Implementing a system that permits reproduction of electronic copies of records in a format that is generally recognized as an industry standard format.

(3) Implementing a system that permits making records available through the largest non-profit, non-proprietary public computer network, consistent with the requirement for security of information. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 253-96, App. 6/19/96; Proposition G, 11/2/99)

Sec. 67.22. Release Of Oral Public Information.

Release of oral public information shall be accomplished as follows:

(a) Every department head shall designate a person or persons knowledgeable about the affairs of the department, to provide information, including oral information, to the public about the department's operations, plans, policies and positions. The department head may designate himself or herself for this assignment, but in any event shall arrange that an alternate be available for this function during the absence of the person assigned primary responsibility. If a department has multiple bureaus or divisions, the department may designate a person or persons for each bureau or division to provide this information.

(b) The role of the person or persons so designated shall be to provide information on as timely and responsive a basis as possible to those members of the public who are not requesting information from a specific person. This section shall not be interpreted to curtail existing informal contacts between employees and members of the public when these contacts are occasional, acceptable to the employee and the department, not disruptive of his or her operational duties and confined to accurate information not confidential by law.

(c) No employee shall be required to respond to an inquiry or inquiries from an individual if it would take the employee more than fifteen minutes to obtain the information responsive to the inquiry or inquiries.

(d) Public employees shall not be discouraged from or disciplined for the expression of their personal opinions on any matter of public concern while not on duty, so long as the opinion (1) is not represented as that of the department and does not misrepresent the department position; and (2) does not disrupt coworker relations, impair discipline or control by superiors, erode a close working relationship premised on personal loyalty and confidentiality, interfere with the employee's performance of his or her duties or obstruct the routine operation of the office in a manner that outweighs the employee's interests in expressing that opinion. In adopting this subdivision, the Board of Supervisors intends merely to restate and affirm court decisions recognizing the First Amendment rights enjoyed by public employees. Nothing in this section shall be construed to provide rights to City employees beyond those recognized by courts, now or in the future, under the First Amendment, or to create any new private cause of action or defense to disciplinary action.

(e) Notwithstanding any other provisions of this ordinance, public employees shall not be discouraged from or disciplined for disclosing any information that is public information or a public record to any journalist or any member of the public. Any public employee who is disciplined for disclosing public information or a public record shall have a cause of action against the City and the supervisor imposing the discipline. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.23. Public Review File--Policy Body Communications.

(a) The clerk of the Board of Supervisors and the clerk of each board and commission enumerated in the charter shall maintain a file, accessible to any person during normal office hours, containing a copy of any letter, memorandum or other communication which the clerk has distributed to or received from a quorum of the policy body concerning a matter calendared by the body within the previous 30 days or likely to be calendared within the next 30 days, irrespective of subject matter, origin or recipient, except commercial solicitations, periodical publications or communications exempt from disclosure under the California Public Records Act (Government Code Section 6250 et seq.) and not deemed disclosable under Section 67.24 of this article.

(b) Communications, as described in subsection (a), sent or received in the last three business days shall be maintained in chronological order in the office of the department head or at a place nearby, clearly designated to the public. After documents have been on file for two full days, they may be removed, and, in the discretion of the board or commission, placed in a monthly chronological file.

(c) Multiple-page reports, studies or analyses which are accompanied by a letter or memorandum of transmittal need not be included in the file so long as the letter or memorandum of transmittal is included. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.24. Public Information That Must Be Disclosed.

Notwithstanding a department's legal discretion to withhold certain information under the California Public Records Act, the following policies shall govern specific types of documents and information and shall provide enhanced rights of public access to information and records:

(a) Drafts and Memoranda.

(1) Except as provided in subparagraph (2), no preliminary draft or department memorandum, whether in printed or electronic form, shall be exempt from disclosure under Government Code Section 6254, subdivision (a) or any other provision. If such a document is not normally kept on file and would otherwise be disposed of, its factual content is not exempt under subdivision (a). Only the recommendation of the author may, in such circumstances, be withheld as exempt.

(2) Draft versions of an agreement being negotiated by representatives of the City with some other party need not be disclosed immediately upon creation but must be preserved and made available for public review for 10 days prior to the presentation of the agreement for approval by a policy body, unless the body finds that and articulates how the public interest would be unavoidably and substantially harmed by compliance with this 10 day rule, provided that policy body as used in this subdivision does not include committees. In the case of negotiations for a contract, lease or other business agreement in which an agency of the City is offering to provide facilities or services in direct competition with other public or private entities that are not required by law to make their competing proposals public or do not in fact make their proposals public, the policy body may postpone public access to the final draft agreement until it is presented to it for approval.

(b) Litigation Material.

(1) Notwithstanding any exemptions otherwise provided by law, the following are public records subject to disclosure under this Ordinance:

(i) A pre-litigation claim against the City;

(ii) A record previously received or created by a department in the ordinary course of business that was not attorney/client privileged when it was previously received or created;

(iii) Advice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise concerning the California Public Records Act, the Ralph M. Brown Act, the Political Reform Act, any San Francisco governmental ethics code, or this Ordinance.

(2) Unless otherwise privileged under California law, when litigation is finally adjudicated or otherwise settled, records of all communications between the department and the adverse party shall be subject to disclosure, including the text and terms of any settlement.

(c) Personnel Information. None of the following shall be exempt from disclosure under Government Code Section 6254, subdivision (c), or any other provision of California Law where disclosure is not forbidden:

(1) The job pool characteristics and employment and education histories of all successful job applicants, including at a minimum the following information as to each successful job applicant:

(i) Sex, age and ethnic group;

(ii) Years of graduate and undergraduate study, degree(s) and major or discipline;

(iii) Years of employment in the private and/or public sector;

(iv) Whether currently employed in the same position for another public agency.

(v) Other non-identifying particulars as to experience, credentials, aptitudes, training or education entered in or attached to a standard employment application form used for the position in question.

(2) The professional biography or curriculum vitae of any employee, provided that the home address, home telephone number, social security number, age, and marital status of the employee shall be redacted.

(3) The job description of every employment classification.

(4) The exact gross salary and City-paid benefits available to every employee.

(5) Any memorandum of understanding between the City or department and a recognized employee organization.

(6) The amount, basis, and recipient of any performance-based increase in compensation, benefits, or both, or any other bonus, awarded to any employee, which shall be announced during the open session of a policy body at which the award is approved.

(7) The record of any confirmed misconduct of a public employee involving personal dishonesty, misappropriation of public funds, resources or benefits, unlawful discrimination against another on the basis of status, abuse of authority, or violence, and of any discipline imposed for such misconduct.

(d) Law Enforcement Information.

The District Attorney, Chief of Police, and Sheriff are encouraged to cooperate with the press and other members of the public in allowing access to local records pertaining to investigations, arrests, and other law enforcement activity. However, no provision of this ordinance is intended to abrogate or interfere with the constitutional and statutory power and duties of the District Attorney and Sheriff as interpreted under Government Code section 25303, or other applicable state law or judicial decision. Records pertaining to any investigation, arrest or other law

enforcement activity shall be disclosed to the public once the District Attorney or court determines that a prosecution will not be sought against the subject involved, or once the statute of limitations for filing charges has expired, whichever occurs first. Notwithstanding the occurrence of any such event, individual items of information in the following categories may be segregated and withheld if, on the particular facts, the public interest in nondisclosure clearly and substantially outweighs the public interest in disclosure:

- (1) The names of juvenile witnesses (whose identities may nevertheless be indicated by substituting a number or alphabetical letter for each individual interviewed);
- (2) Personal or otherwise private information related to or unrelated to the investigation if disclosure would constitute an unwarranted invasion of privacy;
- (3) The identity of a confidential source;
- (4) Secret investigative techniques or procedures;
- (5) Information whose disclosure would endanger law enforcement personnel; or
- (6) Information whose disclosure would endanger the successful completion of an investigation where the prospect of enforcement proceedings is concrete and definite.

This subdivision shall not exempt from disclosure any portion of any record of a concluded inspection or enforcement action by an officer or department responsible for regulatory protection of the public health, safety, or welfare.

(e) Contracts, Bids and Proposals

(1) Contracts, contractors' bids, responses to requests for proposals and all other records of communications between the department and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. All bidders and contractors shall be advised that information provided which is covered by this subdivision will be made available to the public upon request. Immediately after any review or evaluation or rating of responses to a Request for Proposal ("RFP") has been completed, evaluation forms and score sheets and any other documents used by persons in the RFP evaluation or contractor selection process shall be available for public inspection. The names of scorers, graders or evaluators, along with their individual ratings, comments, and score sheets or comments on related documents, shall be made immediately available after the review or evaluation of a RFP has been completed.

(2) Notwithstanding the provisions of this subdivision or any other provision of this ordinance, the Director of Public Health may withhold from disclosure proposed and final rates of payment for managed health care contracts if the Director determines that public disclosure would adversely affect the ability of the City to engage in effective negotiations for managed health care contracts. The authority to withhold this information applies only to contracts pursuant to which the City (through the Department of Public Health) either pays for health care services or receives compensation for providing such services, including mental health and substance abuse services, to covered beneficiaries through a pre-arranged rate of payment. This provision also applies to rates for managed health care contracts for the University of California, San Francisco, if the contract involves beneficiaries who receive services provided jointly by the City and University. This provision shall not authorize the Director to withhold rate information from disclosure for more than three years.

(3) During the course of negotiations for:

- (i) personal, professional, or other contractual services not subject to a competitive process or where such a process has arrived at a stage where there is only one qualified or responsive bidder;
- (ii) leases or permits having total anticipated revenue or expense to the City and County of five hundred thousand dollars (\$500,000) or more or having a term of ten years or more; or
- (iii) any franchise agreements,

all documents exchanged and related to the position of the parties, including draft contracts, shall be made available for public inspection and copying upon request. In the event that no records are prepared or exchanged during negotiations in the above-mentioned categories, or the records exchanged do not provide a meaningful representation of the respective positions, the city attorney or city representative familiar with the negotiations shall, upon a written request by a member of the public, prepare written summaries of the respective positions within five working days following the final day of negotiation of any given week. The summaries will be available for public inspection and copying. Upon completion of negotiations, the executed contract, including the dollar amount of said contract, shall be made available for inspection and copying. At the end of each fiscal year, each City department shall provide to the Board of Supervisors a list of all sole source contracts entered into during the past fiscal year. This list shall be made available for inspection and copying as provided for elsewhere in this Article.

(f) Budgets and Other Financial Information. Budgets, whether tentative, proposed or adopted, for the City or any of its departments, programs, projects or other categories, and all bills, claims, invoices, vouchers or other records of payment obligations as well as records of actual disbursements showing the amount paid, the payee and the purpose for which payment is made, other than payments for social or other services whose records are confidential by law, shall not be exempt from disclosure under any circumstances.

(g) Neither the City nor any office, employee, or agent thereof may assert California Public Records Act Section 6255 or any similar provision as the basis for withholding any documents or information requested under this ordinance.

(h) Neither the City nor any office, employee, or agent thereof may assert an exemption for withholding for any document or information based

on a "deliberative process" exemption, either as provided by California Public Records Act Section 6255 or any other provision of law that does not prohibit disclosure.

(i) Neither the City, nor any office, employee, or agent thereof, may assert an exemption for withholding for any document or information based on a finding or showing that the public interest in withholding the information outweighs the public interest in disclosure. All withholdings of documents or information must be based on an express provision of this ordinance providing for withholding of the specific type of information in question or on an express and specific exemption provided by California Public Records Act that is not forbidden by this ordinance. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 292-95, App. 9/8/95; Ord. 240-98, App. 7/17/98; Proposition G, 11/2/99)

Sec. 67.25. Immediacy Of Response.

(a) Notwithstanding the 10-day period for response to a request permitted in Government Code Section 6256 and in this Article, a written request for information described in any category of non-exempt public information shall be satisfied no later than the close of business on the day following the day of the request. This deadline shall apply only if the words "Immediate Disclosure Request" are placed across the top of the request and on the envelope, subject line, or cover sheet in which the request is transmitted. Maximum deadlines provided in this article are appropriate for more extensive or demanding requests, but shall not be used to delay fulfilling a simple, routine or otherwise readily answerable request.

(b) If the voluminous nature of the information requested, its location in a remote storage facility or the need to consult with another interested department warrants an extension of 10 days as provided in Government Code Section 6456.1, the requester shall be notified as required by the close of business on the business day following the request.

(c) The person seeking the information need not state his or her reason for making the request or the use to which the information will be put, and requesters shall not be routinely asked to make such a disclosure. Where a record being requested contains information most of which is exempt from disclosure under the California Public Records Act and this article, however, the City Attorney or custodian of the record may inform the requester of the nature and extent of the non-exempt information and inquire as to the requester's purpose for seeking it, in order to suggest alternative sources for the information which may involve less redaction or to otherwise prepare a response to the request.

(d) Notwithstanding any provisions of California Law or this ordinance, in response to a request for information describing any category of non-exempt public information, when so requested, the City and County shall produce any and all responsive public records as soon as reasonably possible on an incremental or "rolling" basis such that responsive records are produced as soon as possible by the end of the same business day that they are reviewed and collected. This section is intended to prohibit the withholding of public records that are responsive to a records request until all potentially responsive documents have been reviewed and collected. Failure to comply with this provision is a violation of this article. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.26. Withholding Kept To A Minimum.

No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure under express provisions of the California Public Records Act or of some other statute. Information that is exempt from disclosure shall be masked, deleted or otherwise segregated in order that the nonexempt portion of a requested record may be released, and keyed by footnote or other clear reference to the appropriate justification for withholding required by section 67.27 of this article. This work shall be done personally by the attorney or other staff member conducting the exemption review. The work of responding to a public-records request and preparing documents for disclosure shall be considered part of the regular work duties of any city employee, and no fee shall be charged to the requester to cover the personnel costs of responding to a records request. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.27. Justification Of Withholding.

Any withholding of information shall be justified, in writing, as follows:

(a) A withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted by this ordinance, shall cite that authority.

(b) A withholding on the basis that disclosure is prohibited by law shall cite the specific statutory authority in the Public Records Act or elsewhere.

(c) A withholding on the basis that disclosure would incur civil or criminal liability shall cite any specific statutory or case law, or any other public agency's litigation experience, supporting that position.

(d) When a record being requested contains information, most of which is exempt from disclosure under the California Public Records Act and this Article, the custodian shall inform the requester of the nature and extent of the nonexempt information and suggest alternative sources for the information requested, if available. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.28. Fees For Duplication.

(a) No fee shall be charged for making public records available for review.

(b) For documents routinely produced in multiple copies for distribution, e.g. meeting agendas and related materials, unless a special fee has been established pursuant to subdivision (d) of this section, a fee not to exceed one cent per page may be charged, plus any postage costs.

(c) For documents assembled and copied to the order of the requester, unless a special fee has been established pursuant to subdivision (d) of this section, a fee not to exceed 10 cents per page may be charged, plus any postage.

(d) A department may establish and charge a higher fee than the one cent presumptive fee in subdivision (b) and the 10 cent presumptive fee in subdivision (c) if it prepares and posts an itemized cost analysis establishing that its cost per page impression exceeds 10 cents or one cent, as the case may be. The cost per page impression shall include the following costs: one sheet of paper; one duplication cycle of the copying machine in terms of toner and other specifically identified operation or maintenance factors, excluding electrical power. Any such cost analysis shall identify the manufacturer, model, vendor and maintenance contractor, if any, of the copying machine or machines referred to.

(e) Video copies of video recorded meetings shall be provided to the public upon request for \$10.00 or less per meeting. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.29. Index To Records.

The City and County shall prepare a public records index that identifies the types of information and documents maintained by City and County departments, agencies, boards, commissions, and elected officers. The index shall be for the use of City officials, staff and the general public, and shall be organized to permit a general understanding of the types of information maintained, by which officials and departments, for which purposes and for what periods of retention, and under what manner of organization for accessing, e.g. by reference to a name, a date, a proceeding or project, or some other referencing system. The index need not be in such detail as to identify files or records concerning a specific person, transaction or other event, but shall clearly indicate where and how records of that type are kept. Any such master index shall be reviewed by appropriate staff for accuracy and presented for formal adoption to the administrative official or policy body responsible for the indexed records. The City Administrator shall be responsible for the preparation of this records index. The City Administrator shall report on the progress of the index to the Sunshine Ordinance Task Force on at least a semi-annual basis until the index is completed. Each department, agency, commission and public official shall cooperate with the City Administrator to identify the types of records it maintains, including those documents created by the entity and those documents received in the ordinary course of business and the types of requests that are regularly received. Each department, agency, commission and public official is encouraged to solicit and encourage public participation to develop a meaningful records index. The index shall clearly and meaningfully describe, with as much specificity as practicable, the individual types of records that are prepared or maintained by each department, agency, commission or public official of the City and County. The index shall be sufficient to aid the public in making an inquiry or a request to inspect. Any changes in the department, agency, commission or public official's practices or procedures affecting the accuracy of the information provided to the City Administrator shall be recorded by the City Administrator on a periodic basis so as to maintain the integrity and accuracy of the index. The index shall be continuously maintained on the City's World Wide Website and made available at public libraries within the City and County of San Francisco. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 287-96, App. 7/12/96; Proposition G, 11/2/99)

Sec. 67.29-1. Records Survive Transition Of Officials.

All documents prepared, received, or maintained by the Office of the Mayor, by any elected city and county official, and by the head of any City or County Department are the property of the City and County of San Francisco. The originals of these documents shall be maintained consistent with the records retention policies of the City and County of San Francisco. (Added by Proposition G, 11/2/99)

Sec. 67.29-2. Internet Access/World Wide Web Minimum Standards.

Each department of the City and County of San Francisco shall maintain on a World Wide Web site, or on a comparable, readily accessible location on the Internet, information that it is required to make publicly available. Each department is encouraged to make publicly available through its World Wide Web site, as much information and as many documents as possible concerning its activities. At a minimum, within six months after enactment of this provision, each department shall post on its World Wide Web site all meeting notices required under this ordinance, agendas and the minutes of all previous meetings of its policy bodies for the last three years. Notices and agendas shall be posted no later than the time that the department otherwise distributes this information to the public, allowing reasonable time for posting. Minutes of meetings shall be posted as soon as possible, but in any event within 48 hours after they have been approved. Each department shall make reasonable efforts to ensure that its World Wide Web site is regularly reviewed for timeliness and updated on at least a weekly basis. The City and County shall also make available on its World Wide Web site, or on a comparable, readily accessible location on the Internet, a current copy of the City Charter and all City Codes. (Added by Proposition G, 11/2/99)

SEC. 67.29-3.

Any future agreements between the city and an advertising space provider shall be public records and shall include as a basis for the termination of the contract any action by, or permitted by, the space provider to remove or deface or otherwise interfere with an advertisement without first notifying the advertiser and the city and obtaining the advertiser's consent. In the event advertisements are defaced or vandalized, the space provider shall provide written notice to the city and the advertiser and shall allow the advertiser the option of replacing the defaced or vandalized material. Any request by any city official or by any space provider to remove or alter any advertising must be in writing and shall be a public record. (Added by Proposition G, 11/2/99)

Sec. 67.29-4. Lobbyist On Behalf Of The City.

(a) Any lobbyist who contracts for economic consideration with the City and County of San Francisco to represent the City and County in matters before any local, regional, state, or federal administrative or legislative body shall file a public records report of their activities on a quarterly basis with the San Francisco Ethics Commission. This report shall be maintained by the Ethics Commission and not be exempt from disclosure. Each quarterly report shall identify all financial expenditures by the lobbyist, the individual or entity to whom each expenditure was made, the date the expenditure was made, and specifically identify the local, state, regional or national legislative or administrative action the lobbyist supported or opposed in making the expenditure. The failure to file a quarterly report with the required disclosures shall be a violation of this

Ordinance.

(b) No person shall be deemed a lobbyist under section (a), unless that person receives or becomes entitled to receive at least \$300 total compensation in any month for influencing legislative or administrative action on behalf of the City and County of San Francisco or has at least 25 separate contacts with local, state, regional or national officials for the purpose of influencing legislative or administrative action within any two consecutive months. No business or organization shall be deemed as a lobbyist under section (a) unless it compensates its employees or members for their lobbying activities on behalf of the City and County of San Francisco, and the compensated employees or members have at least 25 separate contacts with local, state, regional or national officials for the purpose of influencing legislative or administrative action within any two consecutive months. "Total compensation" shall be calculated by combining all compensation received from the City and County of San Francisco during the month for lobbying activities on matters at the local, state, regional or national level. "Total number of contacts" shall be calculated by combining all contacts made during the two-month period on behalf of the City and County of San Francisco for all lobbying activities on matters at the local, state, regional or national level.

(c) Funds of the City and County of San Francisco, including organizational dues, shall not be used to support any lobbying efforts to restrict public access to records, information, or meetings, except where such effort is solely for the purpose of protecting the identity and privacy rights of private citizens. (Added by Proposition G, 11/2/99)

Sec. 67.29-5. Calendars Of Certain Officials.

The Mayor, The City Attorney, and every Department Head shall keep or cause to be kept a daily calendar wherein is recorded the time and place of each meeting or event attended by that official, with the exclusion of purely personal or social events at which no city business is discussed and that do not take place at City Offices or at the offices or residences of people who do substantial business with or are otherwise substantially financially affected by actions of the city. For meetings not otherwise publicly recorded, the calendar shall include a general statement of issues discussed. Such calendars shall be public records and shall be available to any requester three business days subsequent to the calendar entry date. (Added by Proposition G, 11/2/99)

Sec. 67.29-6. Sources Of Outside Funding.

No official or employee or agent of the city shall accept, allow to be collected, or direct or influence the spending of, any money, or any goods or services worth more than one hundred dollars in aggregate, for the purpose of carrying out or assisting any City function unless the amount and source of all such funds is disclosed as a public record and made available on the website for the department to which the funds are directed. When such funds are provided or managed by an entity, and not an individual, that entity must agree in writing to abide by this ordinance. The disclosure shall include the names of all individuals or organizations contributing such money and a statement as to any financial interest the contributor has involving the City. (Added by Proposition G, 11/2/99)

Sec. 67.29-7. Correspondence And Records Shall Be Maintained.

(a) The Mayor and all Department Heads shall maintain and preserve in a professional and businesslike manner all documents and correspondence, including but not limited to letters, e-mails, drafts, memorandum, invoices, reports and proposals and shall disclose all such records in accordance with this ordinance.

(b) The Department of Elections shall keep and preserve all records and invoices relating to the design and printing of ballots and other election materials and shall keep and preserve records documenting who had custody of ballots from the time ballots are cast until ballots are received and certified by the Department of Elections.

(c) In any contract, agreement or permit between the City and any outside entity that authorizes that entity to demand any funds or fees from citizens, the City shall ensure that accurate records of each transaction are maintained in a professional and businesslike manner and are available to the public as public records under the provisions of this ordinance. Failure of an entity to comply with these provisions shall be grounds for terminating the contract or for imposing a financial penalty equal to one-half of the fees derived under the agreement or permit during the period of time when the failure was in effect. Failure of any Department Head under this provision shall be a violation of this ordinance. This paragraph shall apply to any agreement allowing an entity to tow or impound vehicles in the City and shall apply to any agreement allowing an entity to collect any fee from any persons in any pretrial diversion program. (Added by Proposition G, 11/2/99)

Sec. 67.30. The Sunshine Ordinance Task Force.

(a) There is hereby established a task force to be known as the Sunshine Ordinance Task Force consisting of eleven voting members appointed by the Board of Supervisors. All members must have experience and/or demonstrated interest in the issues of citizen access and participation in local government. Two members shall be appointed from individuals whose names have been submitted by the local chapter of the Society of Professional Journalists, one of whom shall be an attorney and one of whom shall be a local journalist. One member shall be appointed from the press or electronic media. One member shall be appointed from individuals whose names have been submitted by the local chapter of the League of Women Voters. Four members shall be members of the public who have demonstrated interest in or have experience in the issues of citizen access and participation in local government. Two members shall be members of the public experienced in consumer advocacy. One member shall be a journalist from a racial/ethnic-minority-owned news organization and shall be appointed from individuals whose names have been submitted by New California Media. At all times the task force shall include at least one member who shall be a member of the public who is physically handicapped and who has demonstrated interest in citizen access and participation in local government. The Mayor or his or her designee, and the Clerk of the Board of Supervisors or his or her designee, shall serve as non-voting members of the task force. The City Attorney shall serve as legal advisor to the task force. The Sunshine Ordinance Task Force shall, at its request, have assigned to it an attorney from within the City Attorney's Office or other appropriate City Office, who is experienced in public-access law matters. This attorney shall serve solely as a

legal advisor and advocate to the Task Force and an ethical wall will be maintained between the work of this attorney on behalf of the Task Force and any person or Office that the Task Force determines may have a conflict of interest with regard to the matters being handled by the attorney.

(b) The term of each appointive member shall be two years unless earlier removed by the Board of Supervisors. In the event of such removal or in the event a vacancy otherwise occurs during the term of office of any appointive member, a successor shall be appointed for the unexpired term of the office vacated in a manner similar to that described herein for the initial members. The task force shall elect a chair from among its appointive members. The term of office as chair shall be one year. Members of the task force shall serve without compensation.

(c) The task force shall advise the Board of Supervisors and provide information to other City departments on appropriate ways in which to implement this chapter. The task force shall develop appropriate goals to ensure practical and timely implementation of this chapter. The task force shall propose to the Board of Supervisors amendments to this chapter. The task force shall report to the Board of Supervisors at least once annually on any practical or policy problems encountered in the administration of this chapter. The Task Force shall receive and review the annual report of the Supervisor of Public Records and may request additional reports or information as it deems necessary. The Task Force shall make referrals to a municipal office with enforcement power under this ordinance or under the California Public Records Act and the Brown Act whenever it concludes that any person has violated any provisions of this ordinance or the Acts. The Task Force shall, from time to time as it sees fit, issue public reports evaluating compliance with this ordinance and related California laws by the City or any Department, Office, or Official thereof.

(d) In addition to the powers specified above, the Task Force shall possess such powers as the Board of Supervisors may confer upon it by ordinance or as the People of San Francisco shall confer upon it by initiative.

(e) The Task Force Commission shall approve by-laws specifying a general schedule for meetings, requirements for attendance by Task Force members, and procedures and criteria for removing members for non-attendance. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 118-94, App. 3/18/94; Ord. 432-94, App. 12/30/94; Ord. 287-96, App. 7/12/96; Ord. 198-98, App. 6/19/98; 387-98, App. 12/24/98; Proposition G, 11/2/99)

Sec. 67.31. Responsibility For Administration.

The Mayor shall administer and coordinate the implementation of the provisions of this chapter for departments under his or her control. The Mayor shall administer and coordinate the implementation of the provisions of this chapter for departments under the control of board and commissions appointed by the Mayor. Elected officers shall administer and coordinate the implementation of the provisions of this chapter for departments under their respective control. The Clerk of the Board of Supervisors shall provide a full-time staff person to perform administrative duties for the Sunshine Ordinance Task Force and to assist any person in gaining access to public meetings or public information. The Clerk of the Board of Supervisors shall provide that staff person with whatever facilities and equipment are necessary to perform said duties. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 287-96, App. 7/12/96; Proposition G, 11/2/99)

Sec. 67.32. Provision Of Services To Other Agencies; Sunshine Required.

It is the policy of the City and County of San Francisco to ensure opportunities for informed civic participation embodied in this Ordinance to all local, state, regional and federal agencies and institutions with which it maintains continuing legal and political relationships. Officers, agents and other representatives of the City shall continually, consistently and assertively work to seek commitments to enact open meetings, public information and citizen comment policies by these agencies and institutions, including but not limited to the Presidio Trust, the San Francisco Unified School District, the San Francisco Community College District, the San Francisco Transportation Authority, the San Francisco Housing Authority, the Treasure Island Development Authority, the San Francisco Redevelopment Authority and the University of California. To the extent not expressly prohibited by law, copies of all written communications with the above identified entities and any City employee, officer, agents, or and representative, shall be accessible as public records. To the extent not expressly prohibited by law, any meeting of the governing body of any such agency and institution at which City officers, agents or representatives are present in their official capacities shall be open to the public, and this provision cannot be waived by any City officer, agent or representative. The city shall give no subsidy in money, tax abatements, land, or services to any private entity unless that private entity agrees in writing to provide the city with financial projections (including profit and loss figures), and annual audited financial statements for the project thereafter, for the project upon which the subsidy is based and all such projections and financial statements shall be public records that must be disclosed. (Added by Proposition G, 11/2/99)

Sec. 67.33. Department Head Declaration.

All City department heads and all City management employees and all employees or officials who are required to sign an affidavit of financial interest with the Ethics Commission shall sign an annual affidavit or declaration stating under penalty of perjury that they have read the Sunshine Ordinance and have attended or will attend when next offered, a training session on the Sunshine Ordinance, to be held at least once annually. The affidavit or declarations shall be maintained by the Ethics Commission and shall be available as a public record. Annual training shall be provided by the San Francisco City Attorney's Office with the assistance of the Sunshine Ordinance Task Force. (Added by Proposition G, 11/2/99)

Sec. 67.34. Willful Failure Shall Be Official Misconduct.

The willful failure of any elected official, department head, or other managerial city employee to discharge any duties imposed by the Sunshine Ordinance, the Brown Act or the Public Records Act shall be deemed official misconduct. Complaints involving allegations of willful violations of this ordinance, the Brown Act or the Public Records Act by elected officials or department heads of the City and County of San Francisco shall be handled by the Ethics Commission. (Added by Proposition G, 11/2/99)

Sec. 67.35. Enforcement Provisions.

(a) Any person may institute proceedings for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any public record or class of public records under this Ordinance or to enforce his or her right to attend any meeting required under this Ordinance to be open, or to compel such meeting to be open.

(b) A court shall award costs and reasonable attorneys' fees to the plaintiff who is the prevailing party in an action brought to enforce this Ordinance.

(c) If a court finds that an action filed pursuant to this section is frivolous, the City and County may assert its rights to be paid its reasonable attorneys' fees and costs.

(d) Any person may institute proceedings for enforcement and penalties under this act in any court of competent jurisdiction or before the Ethics Commission if enforcement action is not taken by a city or state official 40 days after a complaint is filed. (Added by Proposition G, 11/2/99)

Sec. 67.36. Sunshine Ordinance Supersedes Other Local Laws.

The provisions of this Sunshine Ordinance supersede other local laws. Whenever a conflict in local law is identified, the requirement which would result in greater or more expedited public access to public information shall apply. (Added by Proposition G, 11/2/99)

Sec. 67.37. Severability.

The provisions of this chapter are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this chapter, or the invalidity of the application thereof to any person or circumstances, shall not affect the validity of the remainder of this chapter, or the validity of its application to other persons or circumstances. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67a.1. Prohibiting The Use Of Cell Phones, Pagers And Similar Sound-Producing Electrical Devices At And During Public Meetings.

At and during a public meeting of any policy body governed by the San Francisco Sunshine Ordinance, the ringing and use of cell phones, pagers and similar sound-producing electronic devices shall be prohibited. The presiding officer of any public meeting which is disrupted may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing electronic devices. The presiding officer may allow an expelled person to return to the public meeting following an agreement by the expelled person to comply with the provisions of this Section. A warning of the provisions of this Section shall be printed on all meeting agendas, and shall be explained at the beginning of each public meeting by the presiding officer. (Added by Ord. 286-00, File No. 001155, App. 12/22/2000)



ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

BENEDICT Y. HUR
CHAIRPERSON

Date: March 18, 2014

PAUL A. RENNE
VICE-CHAIRPERSON

To: Members, Ethics Commission

BRETT ANDREWS
COMMISSIONER

From: John St. Croix, Executive Director
By: Shaista Shaikh, Assistant Deputy Director

BEVERLY HAYON
COMMISSIONER

Re: Audit Selection of Year 2013 Committees

PETER KEANE
COMMISSIONER

This memorandum explains the Ethics Commission's audit selection guidelines and summarizes the levels of financial activity by the different types of committees that were active during 2013. At its March 24, 2014 meeting, the Commission will randomly select committees to be audited.

JOHN ST. CROIX
EXECUTIVE DIRECTOR

Staff has determined that it will be able to audit five recipient committees that were active in the November 5, 2013 election. The audit pool includes:

- all candidates¹ who ran for City elective office in the November 2013 election;
- ballot measure committees active in the November 2013 election; and
- general purpose recipient and primarily formed candidate committees that were active in 2013.

Table 1: Types and Financial Activity Levels of Committees Active in 2013

Level of Financial Activity ²	Candidates	Ballot Measure Committees	General Purpose Committees	No. of committees in audit pool	No. of committees to be selected
(1) \$10,000 to \$50,000	1	1	16	18	1 (6%)
(2) Above \$50,000 to \$100,000	1	0	4	5	1 (20%)
(3) Above \$100,000	2	4	3	9	3 (33%)
Total	4	5	23	32	5 (16%)

¹ There were no publicly financed candidates in the November 2013; public funded candidates would not be part of the audit pool because they are subject to a mandatory audit. The pool also excludes candidates for county central committees, general purpose committees that were selected for audit through the 2012 random selection process, and committees with financial activity of less than \$10,000.

² For candidates and ballot measure committees, the level of financial activity is based on the sum of expenditures made by these candidates and committees from the time their committees were formed through December 31, 2013. For general purpose committees, the level of financial activity is based on the expenditures made in 2013.

The November 2013 ballot involved the election of candidates for the offices of City Attorney, Treasurer, Assessor, and the District 4 seat of the Board of Supervisors; only four candidates with committees ran for office in 2013. The November 2013 ballot also included four ballot measures, which resulted in five ballot measure committees that were formed to support or oppose one or more of these measures. In total, the 2013 audit pool includes 32 committees that spent \$10,000 or more. Staff recommends that the Commission select five, or 16 percent, of the 32 committees for audit in the following manner: one committee from activity level of \$10,000 to \$50,000; one committee from activity level of greater than \$50,000 to \$100,000; and three committees from activity level greater than \$100,000.

Most of the audits from the 2011 audit batch have been completed and staff has commenced conducting audits from the 2012 audit batch. Given that the 2011 and 2012 audits need to be completed and that the number of committees with activity in the 2013 election is significantly lower than the number in past audit pools, staff recommends that the Commission select no more than five committees for audit from the 2013 audit pool (see attached list).

San Francisco Ethics Commission
2013 Audit Pool

Filer ID	Committee Name	Committee Type	Total Expenditures	Level of Financial Activity
1361187	Sierra Club, SF Bay Chapter Against B&C, sponsored by No Wall on the Northeast Waterfront, No on B&C (see attachment for full committee name).	BMC	\$33,437	1
1355788	Cisneros for Treasurer 2013	CTL	\$23,844	1
970432	BUILDING OWNERS AND MANAGERS ASSOCIATION OF SAN FRANCISCO POLITICAL ACTION COMMITTEE - BALLOT ISSUES (AKA BOMA-SF-PAC-BALLOT ISSUES)	RCP	\$10,548	1
970630	SAN FRANCISCO LABOR & NEIGHBOR MEMBER EDUCATION./POLITICAL ISSUES COMMITTEE	RCP	\$10,565	1
1362060	COMMITTEE FOR A BRIGHTER SAN FRANCISCO FUTURE	RCP	\$10,803	1
1342652	Latino Democratic Club: San Francisco	RCP	\$11,140	1
1329001	STANDING UP FOR WORKING FAMILIES, A COALITION OF TEACHERS, NURSES, FIREFIGHTERS, PUBLIC EMPLOYEES AND HEALTH CARE ADVOCATES	RCP	\$11,152	1
961946	San Francisco Young Democrats	RCP	\$12,176	1
1245538	Plan C San Francisco PAC	RCP	\$15,503	1
1271203	San Francisco Municipal Executives' Association PAC	RCP	\$15,790	1
1318200	National Union of Healthcare Workers Candidate Committee for Quality Patient Care and Union Democracy	RCP	\$20,896	1
931558	Asian Pacific Democratic Club Political Action Committee	RCP	\$21,760	1
870449	BUILDING OWNERS AND MANAGERS ASSOCIATION OF SAN FRANCISCO POLITICAL ACTION COMMITTEE - INDEPENDENT EXPENDITURES AKA BOMA-SF-PAC-IE	RCP	\$23,068	1
932123	GOLDEN GATE RESTAURANT ASSOCIATION PAC	RCP	\$24,404	1
1237101	San Francisco Building and Construction Trades Council Political Organization of Workers for Employee Rights (POWER PAC)	RCP	\$24,826	1
921683	Harvey Milk LGBT Democratic Club PAC	RCP	\$32,540	1
1341796	SAN FRANCISCO ALLIANCE FOR JOBS AND SUSTAINABLE GROWTH PAC	RCP	\$32,615	1
891575	SF FORWARD SPONSORED BY SAN FRANCISCO CHAMBER OF COMMERCE	RCP	\$38,201	1
1355781	Dennis Herrera for City Attorney 2013	CTL	\$96,482	2
842018	Alice B. Toklas Lesbian and Gay Democratic Club PAC	RCP	\$52,201	2
840002	SAN FRANCISCO APARTMENT ASSOCIATION POLITICAL ACTION COMMITTEE	RCP	\$54,476	2
1317554	San Francisco Police Officers Association Issues PAC	RCP	\$63,624	2
982683	Committee on Jobs Government Reform Fund	RCP	\$93,286	2
1353742	THE COMMITTEE ON FAIR DRUG PRICING -FAIR/SF - YES ON D, MAJOR FUNDING BY AIDS HEALTHCARE FOUNDATION	BMC	\$393,432	3
1359143	San Franciscans United to Protect Retirees and Taxpayers, Yes on A, A Coalition of labor, business and retirees with major support from the San Francisco Police Officers Association Issues PAC	BMC	\$433,905	3

San Francisco Ethics Commission
2013 Audit Pool

Filer ID	Committee Name	Committee Type	Total Expenditures	Level of Financial Activity
1348226	No Wall on the Northeast Waterfront, No on B & C, supported by local property owners, tenants, neighbors, and environmentalists. Top contributors include Richard and Barbara Stewart	BMC	\$904,985	3
1356686	SAN FRANCISCANS FOR PARKS, JOBS AND HOUSING, YES ON B & C, WITH MAJOR SUPPORT FROM PACIFIC WATERFRONT PARTNERS, LLC, CAHILL CONTRACTORS, INC., BUILDING AND LABOR	BMC	\$2,676,515	3
1356256	KATY TANG FOR SUPERVISOR 2013	CTL	\$133,379	3
1355864	Carmen Chu for Assessor 2013	CTL	\$203,200	3
990028	Protect Our Benefits	RCP	\$107,946	3
941562	SAN FRANCISCO LABOR COUNCIL LABOR & NEIGHBOR PAC	RCP	\$114,841	3
746875	U A LOCAL 38 COPE FUND	RCP	\$127,536	3

Legend for "Committee Type"

BMC	Primarily Formed Ballot Measure Committee
CTL	Candidate-Controlled Committee
RCP	General Purpose Recipient Committee

Legend for "Level of Financial Activity"

1	\$10,000 to \$50,000
2	Above \$50,000 to \$100,000
3	Above \$100,000

RESOLUTION

Whereas:

Article II of the Bylaws of the San Francisco Ethics Commission mandates that, "The mission of the Ethics Commission is to practice and **promote the highest standards of ethical behavior in government.** (Emphasis supplied).

And,

Whereas:

Article XI of the Bylaws of the San Francisco Ethics Commission charges the Commission to act to "...set the highest standards of conduct, including the appearance of propriety in the operation of government and in order to assure public confidence in governing institutions...**Encouraging and promoting integrity in government by education and example...and stimulating accountability of all elected and appointed government employees.** (Emphasis supplied).

And,

Whereas:

Juliet Ellis is the Assistant General Manager of the San Francisco Public Utilities Commission.

And,

Whereas:

Juliet Ellis admitted and stipulated that she committed 2 violations of the San Francisco Campaign and Government Conduct Code Section 3.206 subdivision (a) "INFLUENCING A GOVERNMENTAL DECISION IN WHICH THE OFFICIAL HAS A FINANCIAL BENEFIT." And one violation of San Francisco Campaign and Government Conduct Code Section 3.206 (b) which "...prohibits any City Officer or Employee from making a contract in which he or she has a financial interest." And one

violation of San Francisco Campaign and Government Code
Section 3.218 (a) "INCOMPATIBLE ACTIVITIES."

And,

Whereas:

The San Francisco Ethics Commission is informed that Juliet
Ellis still remains employed in her position as Assistant General
Manager of the San Francisco Public Utilities Commission.

It is resolved that:

The San Francisco Ethics Commission recommends that the
San Francisco Public Utilities Commission terminate Juliet Ellis as
Assistant General Manager of the San Francisco Public Utilities
Commission.



ETHICS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

EXECUTIVE DIRECTOR'S REPORT TO THE SAN FRANCISCO ETHICS COMMISSION For the Regular Meeting of March 24, 2014

BENEDICT Y. HUR
CHAIRPERSON

PAUL A. RENNE
VICE-CHAIRPERSON

BRETT ANDREWS
COMMISSIONER

BEVERLY HAYON
COMMISSIONER

PETER KEANE
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

1. Budget/Staffing.

At the January meeting, the Commission adopted a budget proposal for the Fiscal Year 2014/2015. As previously reported, the extended vacancy in the Audit staff has been filled; however, another auditor has resigned due to an opportunity in another department. We will endeavor to fill this new vacancy as soon as practical.

2. Investigation and enforcement program.

As of March 17, 2014, there were 23 pending formal complaints alleging violations within the Ethics Commission's jurisdiction.

Category	# of Complaints
Campaign Finance	15
Conflict of Interest	2
Governmental Ethics	0
Lobbyist Ordinance	0
Campaign Consultant Ordinance	2
Sunshine Ordinance	4
TOTAL	23

3. Campaign finance disclosure program.

a. Filing deadline. The most recent filing deadline was on January 31, 2014 for the First Semi Annual statement, which covers the reporting period ending December 31, 2013. Of the 183 committees required to file on this deadline, only two have not yet filed and staff is pursuing those entities (one is an office holder and one is a general purpose committee). The next filing deadline is March 24, 2014 for the First Pre-Election statement, which covers the reporting period ending March 17, 2014.

Due to recent changes to the Campaign Finance Reform Ordinance and Ethics Commission regulations, all committees must now file electronic statements and complete the electronic signature requirements. Staff has informed treasurers and candidates about the new requirements and has provided detailed instructions. Staff continues to inform and assist committees during this transition.

b. Collection of late filing fees and contribution forfeitures. In the FY 13-14, as of February 28, the Commission collected a total of \$10,174 in campaign finance late fees and forfeitures. Outstanding late fees and forfeitures total \$22,438, of which waiver

requests are pending for \$210, and \$13,260 is pending at the Bureau of Delinquent Revenues (BDR).

c. Status of accounts to San Francisco Bureau of Delinquent Revenues (BDR). The following chart provides details on active accounts referred to BDR as of January 31, 2014:

#	Committee/ Filer	ID #	Treasurer or Responsible Officer	Date referral effective	Original amount referred	Last month's balance	Current balance (Changes are in bold)
1	Johnny K. Wang JKW Political Consulting	100716	Johnny K. Wang	4/19/11	\$4,000	\$4,000	\$4,000
2	Coalition to Elect Chris Jackson to Community College Board	1302351	Chris Jackson	6/17/11	\$2,658.90	\$2,658.90	2,658.90
3	Chris Jackson For Community College Board	1347066	Chris Jackson	7/12/13	\$6,600.94	\$6,600.94	\$6,600.94
						TOTAL	\$13,260

4. Revenues report.

For FY 13-14, the Commission is budgeted to generate \$100,000 in revenues. As of March 14, 2014, the Commission received \$65,096 as summarized below. The figure represents collection of approximately 76 percent of expected revenues for FY 13-14, 71 percent of the fiscal year having elapsed.

Revenues received as of March 14, 2014:

Source	Budgeted Amount FY 13-14	Receipts
Lobbyist Fees	\$27,000	\$55,000
Other Ethics General	\$1,000	\$12
Campaign Finance Fines	\$50,000	\$10,174
Campaign Consultant Fees	\$18,000	\$5,100
Lobbyist Fines	\$1,000	\$200
Statements of Economic Interests Fines	\$1,000	\$1,410
Other Ethics Fines	\$1,000	\$4,713
Campaign Consultant Fines	\$1,000	\$50
Unallocated	\$0	\$0
Total	\$100,000	\$76,659

5. Lobbyist program.

As of March 17, 2014, 98 individual lobbyists were registered with the Commission. Total revenues collected to date for the 2013-2014 fiscal year amount to \$55,200, with \$55,000 in

lobbyist registration fees and \$200 in fines. The filing deadline for the next lobbyist disclosure statement is April 15, 2014.

6. Campaign Consultant program.

As of March 17, 2014, 19 campaign consultants were registered with the Commission. \$5,150 in registration fees and fines have been collected so far during the 2013-2014 fiscal year. The next campaign consultant quarterly report deadline is Monday, June 16, 2014, covering the reporting period from March 1, 2014 through May 31, 2014. Staff will send reminders to all active campaign consultants before the deadline.

7. Statements of Economic Interests.

On March 12, 2014, staff sent the first of three weekly reminders to filing officers, department heads, and e-filers about the April 1st deadline for filing the Annual Form 700. Subsequent reminders will be sent on March 19th and 26th. As of March 18, 2014, 31 percent (169) e-filers had filed their Annual Form 700 successfully.

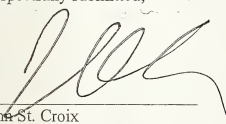
On February 25, 2014, the Ethics Commission provided four staff members to assist with the collection of Sunshine Ordinance Declarations and Certificates of Ethics Training at the City Attorney's AB 1234 training course. Approximately 250 individuals received training.

8. Outreach and Education.

The Commission continues to offer trainings on Statements of Incompatible Activities to City departments via web trainings. The following are web video trainings available on the Commission website:

- Department of Building Inspection SIA Training
- Candidates' Training
- Controller's Office SIA Training
- Department on the Environment SIA Training
- Governmental Ethics Ordinance Training for City Employees
- Lobbyist Ordinance Training
- Medical Examiner's Office SIA Training
- Non-Candidate Recipient Committee Training
- Public Utilities Commission SIA Training
- SIA Template Language Training

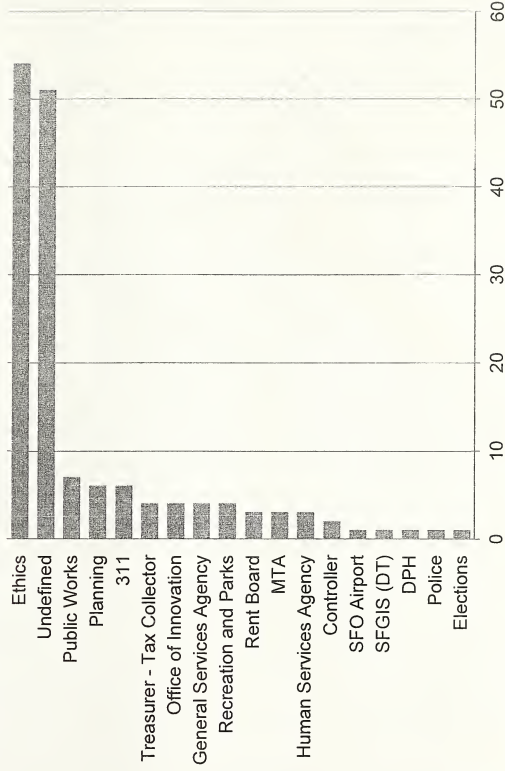
Respectfully submitted,



John St. Croix
Executive Director

Who are our biggest contributors?

Tabular data posted by department



[DRAFT]
Minutes of the Regular Meeting of
The San Francisco Ethics Commission
March 24, 2014
Room 400, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

GOVERNMENT
DOCUMENTS DEPT

APR 25 2014

SAN FRANCISCO
PUBLIC LIBRARY

I. Call to order and roll call.

Chairperson Hur called the meeting to order at 5:30 PM. Executive Director St. Croix welcomed the new Deputy Executive Director, Jesse Mainardi. Chairperson Hur stated that the Commission looked forward to working with him.

[Prior to the meeting being called to order, a member of the public delivered a letter from Juliet Ellis.]

COMMISSION MEMBERS PRESENT: Benedict Y. Hur, Chairperson; Paul Renne, Vice-Chairperson; Brett Andrews, Commissioner; Beverly Hayon, Commissioner; Peter Keane, Commissioner.

STAFF PRESENT: John St. Croix, Executive Director; Jesse Mainardi, Deputy Executive Director; Shaista Shaikh, Assistant Deputy Executive Director; Catherine Argumedo, Investigator/Legal Analyst.

OFFICE OF THE CITY ATTORNEY: Josh White, Deputy City Attorney (DCA).

OTHERS PRESENT: Harlan Kelly, General Manager, San Francisco Public Utilities Commission (SF PUC); Supervisor John Avalos; Francisco Da Costa; Dr. Espanola Jackson; Phaedra Ellis-Lamkins; Amos Brown, President of San Francisco NAACP; Charlie Walker; Jessie Cassella; Eric Larson; Venesia Thompson; Bob Harris; Francesca Vietor, member of the SF PUC; Joe Brooks; Bellamy Brooks; Orson Aguilar; Fred Blackwell, City Administrator, City of Oakland; Rev. Arnold Townsend; Van Jones; Judith Bell; Derecka Mehrens; Aretha Robinson; Vivian Chang; Lisa Gray; Dwayne Jones; Danielle Mahones; Angelo King; Dion-Jay Brookter; Julia Butterfly Hill; Elizabeth; Lisa Spinali; Ed Donaldson; Robert Woods; Teresa Goins; Dr. Caesar Churchwell; John; Christian Forzina; Carol Tatum; Shawn Richard; Larry Edmond; Dr. Derek Kerr; and unidentified members of the public.

MATERIALS DISTRIBUTED:

- Staff Memorandum re: Show Cause Hearing – Ethics Complaint No. 04-140303, dated March 20, 2014, and supporting documents;
- Ethics Commission Regulations for Handling Violations of the Sunshine Ordinance;
- Section 67 of the San Francisco Administrative Code, Sunshine Ordinance;
- Staff Memorandum re: Audit Selection of Year 2013 Committees, dated March 18, 2014;
- Draft Resolution proposed by Commissioner Keane regarding the recent settlement agreement with Juliet Ellis of the San Francisco Public Utilities Commission;
- Approved Stipulation re: Complaint No. 11-130606 and Joint Exhibit with the Fair Political Practices Commission, approved January 27, 2014;
- Letter from the Executive Director to Harlan Kelly, General Manager of the San Francisco Public Utilities Commission, dated January 29, 2014;
- Letter from Juliet Ellis, dated March 24, 2014;
- Draft minutes of the Commission's Regular Meeting of February 24, 2014;
- Executive Director's Report.

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

Harlan Kelly, General Manager of the San Francisco Public Utilities Commission, stated that, due to personnel and confidential rules, he is not able to talk about any specific disciplinary actions that were taken. He stated that the PUC conducted an independent investigation and that there was no new or contradictory information in either the Ethics Commission's or FPPC's investigation. He stated that appropriate actions were taken and the matter is concluded. He stated that it was time to move on.

Supervisor John Avalos stated that the Ethics Commission already made a determination in the matter being discussed today and that he has concerns that it is coming up again. He stated that he has worked with Ms. Ellis for a number of years and that she has worked diligently for the community. He stated that she has great values and that she is doing good work and reaching out to communities of color in San Francisco. He stated that she should continue working in the City.

Francisco Da Costa stated that the constituents created the Ethics Commission to adjudicate all matters in the proper manner. He stated that the work of the Commission should be about morals, ethics and standards, not about selling out the community and values.

Dr. Espanola Jackson stated that she lives in Bayview Hunters Point and that local funds have been diverted to Oakland. She stated that she has concerns that some people do not know the facts and are saying that someone is great. She stated that her community did not need Ms. Ellis there and that they are getting sick and dying every day because of the sewage plant and shipyard.

Pheadra Ellis-Lamkins stated that she was offended that the Commission would consider this item. She stated that Ms. Ellis identified the conflict before anyone else did. She stated that Ms. Ellis took leadership of Green for All while she was on maternity leave. She stated that the hypocrisy of the Ethics Commission is outrageous and unconscionable.

Amos Brown, President of San Francisco NAACP, stated that the Commission has gone through a democratic process, had an investigation and a majority vote. He stated that this action is excessive and a red herring. He suggested that the Commission consider moving on with what it should be doing and walk honorably.

Charlie Walker stated that this is a black-white issue. He stated that slavery has not left us and that San Francisco needs some policy changes. He stated that there is no reason to come down here to talk about something that has already been decided. He stated that he fought for 31 months so that the Commissioners could sit on this board in peace.

Jessie Cassella stated that she has interacted with Ms. Ellis on a regular basis and urged the Commission to reject the proposed resolution. She stated that passing this resolution would be contrary to the Code of Ethics of this Commission. She stated that Ms. Ellis has been a mentor and that few people could do the job that she is doing. She stated that removing Ms. Ellis from her position would be extraordinarily punitive and unnecessary. She questioned the objectivity of the Commission.

Eric Larson, Juliet Ellis' husband, stated that he has known Ms. Ellis for over 20 years. He stated that she is one of the most honest people he knows and that this whole situation has been painful for her and her family. He stated that some people have orchestrated events to smear her good name and that Ms. Ellis has mostly suffered in silence. He thanked her supporters.

Venesia Thompson stated that she had previously worked with Ms. Ellis and that she is passionate about her work. She considered Ms. Ellis a mentor and a friend. She stated that her employment with the city should not be terminated.

Bob Harris spoke about morals and ethics. He stated that a series of events had happened to him that were demoralizing. He said it was time to stop.

Francesca Vietor, member of SF PUC, stated that a settlement had been reached in this case and that Ms. Ellis has paid fines and the matter has been put to rest. She stated that a contract had been signed by both the Commission and Ms. Ellis. She stated that she is proud of the programs Ms. Ellis has initiated and the work she has done and urged the Commission to reject the resolution.

Joe Brooks stated that he has known Ms. Ellis for over 16 years. He stated that he was absolutely floored upon hearing what the Commission was to consider during the meeting. He stated that she had paid her dues and that this action was a witch hunt. He stated that the Commission wasting money and undermining the reputation of a qualified individual.

Bellamy Brooks stated that she met Ms. Ellis years ago and was impressed immediately by her passion and commitment and caring for the community. She stated that Ms. Ellis is currently in Portland addressing a university regarding her work at SF PUC and was invited to Cornell University last week to speak. She stated that this was a disgrace and urged the Commission to reject the resolution. She stated that she was concerned about lawyers who do not understand contract law.

Orson Aguilar stated that he has worked alongside Ms. Ellis for many years and that he cannot think of a better public servant. He asked that the Commission vote against the proposed resolution.

Fred Blackwell, City Administrator for Oakland, stated that he was sad and disappointed to be at the meeting. He stated that Ms. Ellis is hard-working, dedicated, and committed to issues regarding low-income communities and those of color and that he would hire her in a heartbeat. He asked the Commission to reject the proposed resolution.

Rev. Arnold Townsend stated that he was at the meeting about racism, unfairness, and justice. He stated that what the members of the Commission were doing in a suit and tie is no different than what the good old boys did down South when they did not wait for the justice system – another black lynching. He asked the Commission to respect the rights of the judicial system.

Van Jones stated that the Commission was ill-advised and that he felt sorry for the Commissioners. He stated that sometimes people make mistakes and it is easier to admit it early on. He stated that Ms. Ellis made a mistake, came forward, made amends and is trying to move forward. He stated that if she has to follow the rules, then the Commission has to follow the rules. He stated that the state bar looks unkindly on people who have law degrees and abuse their authority and that the state bar will be hearing about the Commission's actions tonight no matter what the outcome.

Judith Bell, of PolicyLink, stated that she has known Ms. Ellis for many years and that she has helped put the SF PUC on the map at a national level. She stated that she cannot understand why this issue has reemerged and that it is outrageous. She urged the Commission to reject the resolution.

Derecka Mehrens stated that she has known Ms. Ellis for over 10 years and has known her to be a person of strong values and convictions. She stated that this action is a witch hunt of outrageous proportions. She stated that the Commission is charged with upholding the common good and that the Commission should take no further action.

Aretha Robinson stated that she did not understand why the Commission is here attacking Ms. Ellis' character after coming to an agreement with her in January. She stated that too many City staff members have been accused of more troubling things and still have their jobs.

Vivian Chang stated that she worked with Juliet Ellis. She stated that the people speaking on behalf of Ms. Ellis are only a fraction of people who believe in Ms. Ellis and what she is trying to do in this city.

Lisa Gray, a professor at Mills College, echoed Rev. Townsend's comments. She stated that Ms. Ellis is being held to undue scrutiny. She urged the Commission to reconsider and reject the proposed resolution. She suggested that the Commission not move forward as it would call into question the Commission's ethics as the action seems to overly penalize African Americans.

Dwayne Jones stated that this is embarrassing and ridiculous. He stated that when this issue first came up, everyone wanted to come before the Commission, but that they were asked to stand down. He stated that they respected the process and now the Commission disrespects them. He stated that the Commission voted and made a decision. He urged the Commission to reject the proposed resolution.

Danielle Mahones stated that she has known Ms. Ellis for over 10 years and she has known her to be a person of honesty, integrity, and passionate and devoted to the community. She stated that everyone makes mistake and that there had been no malicious intent. She stated that Ms. Ellis took responsibility and the matter should have ended there. She stated that it was unclear what the Commission's message was trying to be. She stated that Ms. Ellis is competent and ready to do more. She urged the Commission to reject the proposed resolution.

Angelo King stated that he has known Ms. Ellis for about 15 years. He stated that the decision was made and the Commission should not try to re-open it. He stated that many people have not lost jobs for doing a lot of other things. He stated that the City cannot ask for the best and brightest and then do this to its best and brightest. He urged the Commission not to be used by whoever is pressing for the resolution and to reject the proposed resolution.

Dion-Jay Brookter, Deputy Director of Young Community Developers, stated that the Commission signed a binding agreement in January with Ms. Ellis. He stated that the Commission has broken the agreement just so it could attack a woman of color and that the Commission's investigation found no intent in the violations. He stated that he did not understand why the Commission would bring this up again and that it is a waste of City tax dollars. He urged the Commission to reject the resolution.

Julia Butterfly Hill stated that she lived over two years without touching the ground. She stated that Ms. Ellis took risks to improve the world for others. She stated that Ms. Ellis is a person of integrity and urged the Commission to reject the resolution and move forward.

Elizabeth stated that she has known Ms. Ellis for over 20 years. She stated that she felt compelled to speak on Ms. Ellis' behalf because the attack on her character are unjust. She stated that she does not understand the hidden agenda in this action and that it is shameful and disgraceful. She stated that Ms. Ellis cares about her work.

Lisa Spinali stated that she has worked with Ms. Ellis for many years. She stated that the matter was heard and closed and that the Commission's actions sadden her and are an embarrassment to San Francisco. She urged the Commission not to consider the resolution and to permit Ms. Ellis continue her work.

Ed Donaldson, Chairperson of San Francisco Chapter of the Alliance for Californians for Community Empowerment, stated that Ms. Ellis has inspired many people and created something out of nothing, as she is an extraordinary woman. He asked the Commission to dismiss the resolution and allow Ms. Ellis to go on with her life.

Robert Woods, of the San Francisco Black Human Rights Leadership Council, stated that the people of Bayview Hunters Point are living with a solid waste facility and he came to ask for help to talk to Ms. Ellis about the community's needs.

Teresa Goins, founder of the Old Skool Café, stated that Ms. Ellis has been great friend to her organization and the youth. She urged the Commission to stop the resolution and to apologize to Ms. Ellis. She stated that this action is a waste of everyone's time and is beyond unfortunate. She asked the Commission to move on.

Dr. Caesar Churchwell, Vice-President of San Francisco African American Chamber of Commerce, stated that he was unsure whether the Commission understood what a closed case means. He stated that he did not understand why the Commission was reopening the matter. He stated that it is a witch hunt and should have been resolved a long time ago. He asked the Commission to do the ethical thing.

John echoed the statements of many earlier speakers. He stated that Ms. Ellis has advanced a number of programs through SF PUC and that this matter was concluded a couple months ago. He stated that the Commission should change the resolution to an apology to Ms. Ellis. He urged the Commission to stop this politically-motivated action.

Christian Forzina stated that punishment is a learning tool and Ms. Ellis has learned from her mistake. He asked the Commission to move forward as it probably has better things to do with your time. He stated that people that push on things like this are trying to hide something themselves. He asked the Commission to let her do her job.

Carol Tatum stated that she has lived in San Francisco since 1955 and has seen how the city treats African Americans. She stated that she heard about the situation yesterday and does not know Ms. Ellis. She stated that there must be some ulterior motive and asked the Commission to stop the mistreatment of African Americans in this City.

Shawn Richard, Executive Director of Brothers Against Guns, stated that Ms. Ellis helped his organization and asked why not reopen the Trayvon Martin case. He stated that everyone should move on.

Larry Edmond, former candidate for Mayor, stated that ethics should be a part of all of our lives. He stated that he was not surprised that this is happening. He stated that African Americans make this city what it is.

Chairperson Hur thanked all of the speakers.

Commissioner Keane asked to be recognized by the Chair. He stated that he never knew Ms. Ellis and did not know her race. He gave a brief history of the matter, stating that Ms. Ellis admitted violations and that the Commission prosecuted her for those ethical violations. He stated that the Commission entered into a stipulation with her and Ms. Ellis accepted certain punishments. He stated that the Commission's job was over in regards to Ms. Ellis. He stated that the specific violations were a fairly egregious ethical breach and he thought that this person has admitted that she engaged in corrupt conduct and would likely be fired. Commissioner Keane stated that he heard SF PUC had not terminated Ms. Ellis and he

introduced the resolution. He stated that he has listened to her supporters' messages and that he agrees that terminating Ms. Ellis would be sending a terrible message to San Francisco, in particular to minority individuals who want to participate in government. Commissioner Keane stated that there has been no hidden agenda or racism and asked to withdraw his proposed resolution.

None of the other Commissioners objected to the withdrawal of the proposed resolution to be considered in Agenda Item V. Chairperson Hur stated that the policy discussion from that agenda item would remain on the agenda so that the Commission would not have this discussion again.

III. Discussion and possible action on matters submitted under Chapter Two of the Ethics Commission's Regulations for Violations of the Sunshine Ordinance.

- a) **Ethics Complaint No. 04-140303 (referred from the Sunshine Ordinance Task Force on March 3, 2014)**
Complainant: Ray Hartz
Respondent: Luis Herrera, City Librarian

[Complainant Ray Hartz was not present.]

Mr. Herrera, City Librarian, stated that after Mr. Hartz had requested the use of audio-visual equipment, the Library explored various options and that the cheapest option would require the Library to spend at least \$40,000. He stated that while the matter was before the Sunshine Ordinance Task Force (Task Force), he brought the issue to the Library Commission in August 2013 for its consideration, as the Library Commission determines the expenditures of the Library's funds. He stated that the Library's DCA advised the Library Commission that making audio-visual requirement available to members of the public is a policy decision, as neither the Brown Act nor the Sunshine Ordinance require agencies to make that equipment available. He stated that the Library Commission agreed not to allow audio-visual equipment for public comment. The Library Commission determined that any member of the public could bring printed copies of any presentation and make them available on the table with the rest of the documents provided by the Library Commission for its meeting. Mr. Herrera stated that the Library did not violate the Sunshine Ordinance.

Commissioner Keane expressed that the Library was discriminating on content, as it was allowing certain groups with certain content to have the use of these facilities and not permitting other members of the public to use the same facilities. He stated that the Library was violating the First Amendment and that it had to allow for people with opposing viewpoints. Mr. Herrera stated that members of the public are not prohibited from making public comment.

Commissioner Andrews asked Mr. Herrera about what alternatives were explored. Mr. Herrera stated that reconfiguring the public's podium to allow for a laptop would require some ADA accommodations and re-cabling. He stated that any presentations from any member of the public could be printed, copied, and made available during the meeting.

Chairperson Hur stated that the Ethics Commission frequently has presenters that speak much longer than three minutes allocated for public comment. He stated that if a member of the public was able to use the equipment during public comment, then all members of the public should be able to use it during public comment.

Vice-Chairperson Renne noted that the equipment is built into the podiums in City Hall, but that the Library meets in a different building. Commissioner Hayon stated that if the Commission requires the Library to make special arrangements, then the Ethics Commission would be requiring all boards and

commissions to do the same. Mr. Herrera noted that various boards and commissions meet outside City Hall and do not have audio-visual equipment available for the public.

Commissioner Andrews suggested that the Library revisit the idea of providing audio-visual equipment to the public. Roberto Lombardi, the Library's Facilities Director, stated that Koret Auditorium was built before the ADA was adopted and that any project would be under the scrutiny of the Mayor's Office of Disability and the podium itself may have to be changed and could possibly require moving seats around the auditorium.

Vice-Chairperson Renne stated that the Task Force initially held the Library in violation and then had a new hearing and charged Mr. Herrera. He stated that the Order of Determination found Mr. Herrera in violation of the Sunshine Ordinance. Commissioner Keane stated that proceeding against the Library is one thing, but proceeding against Mr. Herrera is a different situation. He stated that the Library was not in compliance with the Order, but that he was troubled by putting it on Mr. Herrera. Chairperson Hur agreed. He stated that the Library took action and the party before the Commission does not appear to be the appropriate party. Commissioner Hayon suggested that handing out copies of presentations is sufficient and makes the most sense. Commissioner Hur agreed.

Public Comment:

Dr. Derek Kerr stated that he was uncomfortable that the assumption that members of the public are somehow inferior to people who present to commissions. He stated that there should be some structure, but the public should not be made inferior to architects or experts.

Francisco Da Costa stated that there should be an understanding about three individuals – Ray Hartz, Peter Warfield, and James Chaffee. He stated they were well-versed in audio-visual media and that the City is depriving advocates from making public comment. He stated that he sees Mr. Herrera wasting everyone's time.

Commissioner Hayon stated that the Commission is not holding the public inferior. She asked about the feasibility of a wireless laptop. Mr. Lombardi stated that it may be feasible, but that hardware is more reliable. Commissioner Hayon noted that the Ethics Commission repeatedly sees the Library.

Chairperson Hur asked DCA White whether the Commission could find a violation by the Library, but not Mr. Herrera. DCA White stated that it was beyond the scope to find the Library Commission has committed a violation. DCA White noted that this matter came from a complaint that named the Librarian in his capacity as Librarian.

Commissioner Hayon requested to be recused from this matter, as she is a former Library Commissioner. Executive Director stated that she should have requested it prior to discussion of the matter. DCA White stated that the Commission should vote on the recusal.

Motion 14-03-24-2 (Keane/Renne) Moved, seconded, and passed (5-0) that Commissioner Hayon be permitted to be recused from this matter.

Motion 14-03-24-1 (Renne/Hur) Moved, seconded, and passed (3-1; Keane dissented, Hayon recused) that Mr. Herrera has sustained his burden of proof and find no violation of the Sunshine Ordinance.

Public comment:

Ms. Jackson stated that a Chair cannot make a motion or second a motion.

Chairperson Hur asked whether that was accurate. DCA White stated that was incorrect.

Vice-Chairperson Renne stated that a visual presentation is more persuasive, as opposed to a handout. Chairperson Hur urged the Library to allow public speakers to use something to show the Library Commission and other members of the public to reinforce their argument.

IV. Discussion and possible action on the selection of random audits of 2013 committees.

Executive Director St. Croix stated that staff has the resources to perform five audits of 2013 committees during the coming year. He proposed that the Commission perform one audit from activity level one (level of financial activity between \$10,000 and \$50,000), one from activity level two (level of financial activity between \$50,001 and \$100,000), and three audits from activity level three (level of financial activity above \$100,000). He stated that staff has prepared a box to draw the names and asked for a volunteer to assist with the selection.

Public Comment:

Dr. Derek Kerr asked how the public is to know that every committee has a name in the box.

Executive Director St. Croix stated that the names are read as the names are placed in the selection box and asked whether Dr. Kerr would volunteer to assist. Dr. Kerr agreed and he and Espanola Jackson assisted in the selection of committees to be audited.

Activity Level One

There are 18 committees in this activity level and one committee was selected for audit: Latino Democratic Club: San Francisco (ID# 1342652).

Activity Level Two

There are five committees in this activity level and one committee was selected for audit: San Francisco Apartment Association Political Action Committee (ID# 840002).

Activity Level Three

There are nine committees in this activity level and three committees were selected for audit: SAN FRANCISCANS FOR PARKS, JOBS AND HOUSING, YES ON B & C, WITH MAJOR SUPPORT FROM PACIFIC WATERFRONT PARTNERS, LLC, CAHILL CONTRACTORS, INC., BUILDING AND LABOR (ID# 1356686); No Wall on the Northeast Waterfront, No on B & C, supported by local property owners, tenants, neighbors, and environmentalists. Top contributors include Richard and Barbara Stewart (ID# 1348226); and Protect Our Benefits (ID# 990028).

V. Discussion and possible action where the Commission will conduct a discussion regarding its ability to take further action on settlement agreements approved under the Commission's enforcement process and will specifically consider a resolution proposed by Commissioner Keane to take further action on the recent settlement agreement with Juliet Ellis of the Public Utilities Commission.

[Commissioner Keane withdrew his resolution from consideration during Agenda Item II of this meeting.]

Chairperson Hur stated that the Commission should have a brief discussion on the policy matter. Executive Director St. Croix stated that, as a matter of policy, this possible action has given staff a great deal of discomfort. He stated that it contradicts the purpose of a settlement agreement, as the agreement

itself contains language saying that it will be the final disposition of the matter. He stated that if the Commission were to do this in the future, it would be difficult to negotiate agreements in the future.

Commissioner Keane stated that he did not see this possible action as reopening the matter. He stated that the Commission had done its job and, based on the findings, the particular agency was under the obligation to do something. He stated that the Commission would have been taking up a separate matter relating to the ethical failure of another City agency to do its job. He stated that he did not see the Commission from being precluded from saying another agency had an obligation and they did not do it.

Commissioner Andrews stated that there could be something more clearly outlined within the stipulation regarding disciplinary action. DCA White stated that if the Commission was considering a stipulation and the Commissioners did not agree with its terms, then one course is to reject it or propose an amendment. He stated that any proposed amendment to the agreement would later have to be approved by the Respondent(s). Chairperson Hur stated that the Commission could probably not mandate any disciplinary action by a department head, as the agreement is solely between the Respondent and the Commission. DCA White stated that it would be best to include everything in one agreement and to make it clear that the agreement is the final disposition of the matter and that it would preclude any subsequent consideration of anything related to that matter. Chairperson Hur stated that if the Commission decides something as a body, then it should be included in the settlement agreement, so that everyone is on notice. DCA White stated that if there is no such recommendation included in the settlement agreement, then there would not be any subsequent recommendation.

Deputy Executive Director Mainardi noted that, although the Charter permits the Commission to recommend to the appointing officer that an officer be removed from office, it is unclear whether this applies to City employees and is permitted by the Commission's Enforcement Regulations.

Vice-Chairperson Renne stated that, when considering Ms. Ellis' settlement agreement, he did not believe he was in the position to make the determination that Ms. Ellis should be fired. He stated that if the Commission is to make recommendations about what an agency is to do regarding future employment of a Respondent, then the Commission would need more information from staff's investigation. He noted that Mr. Kelly stated earlier during public comment that he thought he took appropriate action and that she has been a wonderful employee and a community leader. He stated that he did not feel inclined to tell the SF PUC to fire Ms. Ellis.

Commissioner Keane stated that the violations were serious and it seemed appropriate that she should not continue in her current position. Vice-Chairperson Renne stated that Ms. Ellis' conduct was open and cooperative and noted that she is paying a fine. Commissioner Andrews stated that it is a Human Resources issue and the Commission will never know what action, if any, was taken. He stated that, if appropriate, disciplinary action should be taken by the agency.

Chairperson Hur stated that, if the Commission had wanted to provide a recommendation regarding discipline, then the procedure would be to reject the settlement and go back to Ms. Ellis and discuss additional language to the agreement.

Public Comment:

Francisco Da Costa stated that the Commission was slow in adjudicating this case and that there are over 30 cases of the PUC having employees infringe on ethics, morals and standards. He stated that Ms. Ellis employed the wife of the Director of Green for All. He stated that the Commission failed miserably.

Espanola Jackson stated that she would attend the PUC's meeting tomorrow and objected to the sewage plant in Bayview-Hunters Point. She suggested that the Chair should check the rules about seconding a motion.

Dr. Derek Kerr stated that Ms. Ellis had reported her error to the Ethics Commission and the FPPC. He stated that typically these types of matters come from whistleblowers. He expressed concern of Ms. Ellis' return to her position if this case came from a whistleblower, as it could be a risk to the whistleblower.

VI. Discussion and possible action on the minutes of the Commission's meeting of February 24, 2014.

Chairperson Hur stated that he did not second a vote after the Commission returned to open session during that meeting, which was erroneously noted on page 4.

Public Comment:

None.

Motion 14-03-24-3 (Renne/Keane) Moved, seconded, and passed (5-0) that the Commission approve the minutes, as amended.

Public Comment:

None.

VII. Discussion of Executive Director's Report.

Executive Director St. Croix addressed an attachment at the end of his report. He stated that, thanks to the Information Technology Officer, Steven Massey, the Ethics Commission is first in availability of data on San Francisco's public information website: data.sfgov.org

Public Comment:

None.

VIII. Items for future meetings.

Public Comment:

None.

IX. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

None.

X. Adjournment.

Motion 14-03-24-4 (Hayon/Keane) Moved, seconded, and passed (5-0) that the Commission adjourn.

The meeting adjourned at 8:50 PM.

